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IN THE

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 15,726
CRIMINAL

A. RAY SEGAL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the District of Minnesota.

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APR -4 1957
E. E. KOCH
CLERK

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Criminal No. 8792

UNITED STATES OF AMERICA,

Plaintiff,

vs.

A. RAY SEGAL,

Defendant.

DESIGNATION AS TO CONTENTS OF RECORD

The Appellant herein designates the documents to be included in the Record on appeal in the above matter.

1. This Designation and Appellee's Additional Designation
2. Docket Entries of District Court
3. Indictment
4. Complete Transcript of testimony and all exhibits and all original files
5. Government's Requested Instructions
6. Defendant's Requested Instructions
7. Instruction to jury by Court
8. Verdict
9. Motion of defendant to set aside Verdict and direct judgment of acquittal
10. Motion of defendant for a New Trial
11. Order of Court denying Motion of defendant to set aside Verdict and denying motion for new trial
12. Judgment and Sentence
13. Notice of Appeal

14 Bond on Appeal

LINUS J. HAMMOND
330 Minnesota Building
Saint Paul 1, Minnesota
and
RICHARD B. RYAN
1008 Minnesota Building
Saint Paul 1, Minnesota
Attorneys for Appellant

(Filed February 1st 1957.)

(Caption)

APPELLEE'S ADDITIONAL DESIGNATION OF CONTENTS OF RECORD ON APPEAL

The Appellant having heretofore on February 1, 1957, served upon the Appellee a designation of certain portions of the record, proceedings and evidence to be contained in the Record on Appeal, the Appellee comes now and designates in addition thereto all of the original files and a complete transcript for the proceedings at the trial conducted by the Honorable Edward J. Devitt, United States District Judge.

Dated: February 4, 1957.

GEORGE E. MacKINNON,
United States Attorney for
the District of Minnesota,
CLIFFORD JANES,
Assistant United States
Attorney,
221 Federal Courts Bldg.,
St. Paul 2, Minnesota,
Attorneys for Appellee.

(Filed February 4th 1957.)

(Caption)

DOCKET ENTRIES

1956

Feb. 10—Filed indictment.

Feb. 13—Entered arraignment and plea of not guilty.

Mar. 22—Entered dates of trial before Nordbye, J. and jury.

Mar. 23,

Mar. 26,

Mar. 27,

Mar. 28

Mar. 28—Filed and entered verdict of guilty.

July 17—Filed and entered memorandum Order of Nordbye, J. granting new trial.

Oct. 15—Filed Jury list and entered record of trial. (Devitt, J.)

Oct. 16—Filed record of trial.

Oct. 17—Filed record of trial.

Oct. 18—Filed record of trial.

Oct. 19—Filed record of trial.

Oct. 22—Filed record of trial.

Oct. 23—Filed record of trial.

Oct. 24—Filed record of trial.

Filed Verdict of Guilty.

Entered record of oral motion by defendant for Order setting aside the verdict or in the alternative for a new trial. (Written motions to be filed within 5 days from this date.)

Oct. 24—Filed Order continuing defendant on his same Bond. Imposition of sentence deferred for presentence investigation.

Oct. 27—Filed Notice of Motion and Motion for a new trial. (Hearing set for Nov. 13, 1956)

Filed Notice of Motion and Motion for Judgment of Acquittal. (Hearing set for Nov. 13, 1956)

Dec. 11—Entered record of hearing on defendant's motion for a new trial or acquittal—argued in part and further hearing continued to 2 o'clock P. M. on Dec. 12, 1956 (Devitt, J.) Hearing at St. Paul.

Dec. 12—Entered record of further hearing on Motion for a new trial of acquittal—argued by counsel—Mr. Janes granted 5 days to file brief. Motions to be submitted after brief and taken under advisement. (Devitt, J.) Hearing at St. Paul.

1957

Jan. 24—Filed and entered Memorandum Order denying defendant's motion for Judgment of acquittal and for a new trial. (Devitt, J.)

Jan. 28—Filed and entered Judgment and Commitment: 18 months and fine $2,000.00 (Devitt, J.) Made copies of Judgment and Commitment for U. S. Marshal.

Entered Order granting defendant a stay of execution for ten (10) days.

Entered Order continuing defendant on his same Bond until an appeal is taken.

Filed Notice of appeal.

Mailed copy of Notice of Appeal to George E. MacKinnon, U. S. Attorney, 221 Federal Courts Building, St. Paul 2, Minn.

Entered Order setting new Bond—$1,000.00 R. P. R. pending the appeal.

Mailed duplicate Notice of Appeal to Clerk, U. S. Courts of Appeals, St. Louis, Mo., together with Clerk's statement of docket entries.

Jan. 29—Filed and entered Order for Bail on Appeal. (Devitt, J.)

Jan. 31—Filed Bond on appeal—$1,000.00—R. P. R. with Courts approval thereon.

Feb. 1—Filed Designation as to contents of Record.

(Caption)

INDICTMENT

18 U. S. C., Sec. 1622

The Grand Jury charges:

Between September 4, 1953 and October 27, 1953, inclusive, in the City of Minneapolis, County of Hennepin, State and District of Minnesota, one

A. RAY SEGAL

did corruptly, wilfully, wrongfully, unlawfully and knowingly suborn, instigate, and procure one Mary K. Johnson, to commit perjury when she was a witness, who had duly taken an oath that she would testify truly before a competent tribunal, to wit, the United States District Court for the District of Minnesota, Fourth Division, Minneapolis, Minnesota, in the consolidated cases that were on for trial and were entitled United States of America, Plaintiff, versus Robert Bannarn, alias Robert Barnarn, Donald Nelson, Defendants, Criminal No. 8416, and United States of America, Plaintiff, versus Donald Nelson, Defendant, Criminal No. 8445, the said District Court being authorized under the laws of the United States to administer an oath; and said defendant, A. Ray Segal, an attorney at law, and one of the attorneys who defended Donald Nelson, the only defendant who stood trial in the above cases in Criminal Nos. 8416 and 8445, did, then and there, corruptly, unlawfully, wilfully, wrongfully and knowingly suborn, instigate and procure said witness, Mary K. Johnson, to wilfully, wrongfully, unlaw-

fully, knowingly, falsely, and contrary to such oath, testify that:

1.

Q Did you at one time become a prostitute?
A Yes.
Q When was that, Mary, about when?
A In the fall of 1951, September, I believe.
Q And in what city?
A New York.
Q And where did you go from there, from New York?
A No. I think that was in Rhode Island. It was in Rhode Island, and from there I went to New York.
Q Where did you go from New York?
A Chicago.
Q And did you hustle in each of those places?
A Yes.

2.

Q Then did you get into another state?
A I don't know that. I couldn't tell you. I didn't look at any signs along the way. I don't even know what highway I was on.

* * *

Q Was it daytime when you got on the bus at whatever this place was?
A Yes.
Q Was this place Fort Atkinson, Wisconsin?
A That I wouldn't know.
Q Do you know the state you were in?
A No.
Q The state of Wisconsin?
A No.
Q You don't know that?
A No.

3.

Q Did you hustle in Chicago then?
A No, I don't believe I did. I worked at Spiegel's Department Store when I first got there.

Q Did you hustle in Chicago since the time you made this trip?

* * *

A I worked at Spiegel's for quite some time.

Q How long did you work at Spiegel's?

A I don't remember exactly, but it was for a while and I was not hustling.

Q For awhile—you got to Chicago November 11th, let us say.

A Yes.

Q 1952. Were you working at Spiegel's in the Christmas rush?

A Yes.

* * *

Q I only brought up that December 31st so I could help you on these dates. You got there on November 11th. You worked at Spiegel's. Did you hustle in between November 11th and December 31st?

A No, sir.

Q No, sir?

A No.

4.

Q Now, what did you earn a week at Spiegel's from November 11th or thereabout?

* * *

A I believe I made $45.00 a week.

Q And what did you need a day in money in order to live?

A You mean as far as being an addict or just to live?

Q Both.

A I was not an addict at that time. I was not addicted. I was not using—

Q And from November, November 11th until December 31st you were not using?

A No.

5.

Q Did he [Donald Nelson] procure tricks for you?

8

A No.
Q No?
A No, sir, never.

6.

Q Did he [Donald Nelson] know you were a prostitute?
A I don't know how he could have. He never saw me do anything like that.
Q He didn't see you in action, but I want to know if he knew you were a prostitute?
• • •
A That is what I said. He couldn't have unless he saw me.

7.

Q And you got to Chicago about November 11, 1952, and did you see Bobby?
A No. I didn't see him for a long time after that. I didn't know where he was. He was not renting the same place I was.
• • •
Q And then from November 11, 1952 until what time did you see him or hear from him again?
A I think it was a little over a month I had not seen him at all
Q Then you saw him for the first time?
A That is right.
Q Where?
A Gee, I don't know.
Q Chicago?
A Yes, it was in Chicago.

8.

Q Did you do anything with reference to—before you crossed the state line?
• • •
A- I don't really know if we ever did cross the state line. I wasn't watching and I don't know where the state

line was, but I thought this car was following us and I told Don to slow down a little bit, but the car had disappeared so it hadn't made any difference. As far as the state line was concerned I have no idea, I wasn't watching. I don't remember signs along the road or anything. I don't know even if we got across it.

9.

Q Miss Johnson, you did not go down to Chicago for any purpose of prostitution, did you? That was not your purpose when you went to Chicago?

A Not when I left, no.

Q So at the time that you left Minneapolis you had no intention to engage in prostitution?

A That is correct. I was not thinking about it.

Q And you had no intent to engage in any immoral acts either, did you? You know what immoral activities are, anything wrong?

A Well, I didn't know what I might do, except I hadn't planned on it.

Q You had planned to go to Chicago to get a job, isn't that true?

A I was going to go there and work, yes.

Q And I believe you said you planned to go to Chicago to get away from someone?

A That is right.

Q And other than those plans, to get a job and to get away from someone, you had no other purpose in going to Chicago. Isn't that correct?

A Yes. I had not planned on doing anything wrong.

Q. And as a matter of fact when you got to Chicago you did get a job, did you not?

A That is right.

Q And that was for Spiegel's Department Store?

A Yes, sir.

Q And what was the nature of the work?

A I was the head of the ladies' ready-to-wear.

Q Is that a saleslady's job?

A Yes.
Q And the nature of your work was what?
A Sell clothing.
Q You sold dresses to customers, is that right?
A Yes.
Q And that was a full-time job?
A Yes.
Q It was a daytime job. What time did you start work in the morning?
A When they opened. I don't remember. I think they opened at 9 and I worked from 9 until, I think, 5:30.
Q A daily job from 9 to 5:30.
A That is right.
Q And you got paid every week?
A Yes.
Q And for how long a period of time did you stay with Spiegel's?
A I don't remember exactly. I don't remember how long it was.
Q It was for at least a month, was it not?
A It might have been less than a month, but it was a period of time. I mean I did get some pay checks.
Q Did you get paid every week in checks?
A Yes.
Q By Spiegel's.
A Yes.
Q And would you say you got at least three weekly checks?
A I don't remember because I didn't pick up my last check. I was supposed to go back and pick it up and for some reason I never went back and got it.
Q There were at least three checks due you, is that correct?
A I believe so.
Q Possibly more?
A It might have been.

Q But no less?
A No.

That on the contrary it was the truth, and that said Mary K. Johnson then and there knew it to be the truth; and said A. Ray Segal, the defendant, at the time, then and there knew that said Mary K. Johnson was suborned, instigated and procured to testify falsely aforesaid, said A. Ray Segal then and there knew it to be the truth:

1. That said Mary K. Johnson did not become a prostitute in New York or in Rhode Island in September, 1951.

2. That said Mary K. Johnson knew that she was in another state, the state of Wisconsin.

3. That said Mary K. Johnson did engage in prostitution between November 11, 1952 and December 31, 1952 in Chicago, Illinois.

4. That said Mary K. Johnson did, between November 11, 1952 and December 31, 1952, use drugs as an addict in Chicago, Illinois.

5. That Donald Nelson did procure a "trick" for Mary K. Johnson.

6. That Donald Nelson knew Mary K. Johnson was a prostitute.

7. That Mary K. Johnson did see Bobby Bannarn about November 11, 1952 in Chicago, Illinois.

8. That Mary K. Johnson did know she did cross the state line.

9. That Mary K. Johnson did know that one of the purposes of the trip was for her to engage in prostitution in Chicago, Illinois.

That said testimony was material in the trials heretofore mentioned in the United States District Court, Criminal Nos. 8416 and 8445, and that said Mary K. Johnson well

knew such testimony to be false, and said A. Ray Segal, the defendant herein, well knew that said testimony of Mary K. Johnson was false and that he, said A. Ray Segal, the defendant herein, corruptly, unlawfully, wilfully, wrongfully and knowingly did suborn, instigate and procure said witness, Mary K. Johnson, to give said false testimony contrary to her oath.

A TRUE BILL

/s/ George E. MacKinnon
United States Attorney

/s/ C. H. Gieske
Foreman

Filed February 10, 1956.

1.

TRANSCRIPT OF TRIAL PROCEEDINGS REDUCED TO NARRATIVE FORM

Proceedings had in the above entitled matter before the Honorable Edward J. Devitt, one of the the judges of the above court, and a jury, in Minneapolis, Minn., commencing on October 15, 1956.

Clifford F. Janes Esq., and Kenneth Owens, Esq., Assistant United States Attorneys appeared on behalf of the United States, and Linus J. Hammond, Esq., and Richard B. Ryan Esq., appeared as Attorneys for the Defendant.

The Court gave to the jury a preliminary statement as to its duties and obligations and then Mr. Janes made an opening statement to the jury as to what the Government intended to prove. During the course of that statement the following proceedings occurred:

"Then, that trial (meaning the Nelson trial) having been concluded we expect the evidence will show something further in regard to what took place, that some time later on we expect the evidence will show there was a man, Godfrey

Lee Barrett, indicted for the same type of offense.

Mr. Hammond: Just a minute.

(The following proceedings were at the Bench out of the hearing of the jury)

Mr. Hammond: The defendant at this time objects to any testimony in the opening statement or any testimony in the Godfrey Lee Barrett case on the ground that it's irrelevant and immaterial, does not prove or tend to prove any of the issues in this case. It's an occasion, I understand, that happened two years after this transaction in which there are, the Government is attempting to show by witnesses that Mr. Segal made some statements to a witness or to a defendant that he should also testify falsely. Now if we are going to try the Godfrey Lee Barrett case out, which we will have to do if that type of testimony comes in, now, it's at least two years after that transaction, it's no part of any plan or scheme, it doesn't go in any way to prove any intent that I can see. This man is charged with a substantive offense and I certainly am going to object during this trial to any testimony or any opening statement that this man makes about any Godfrey Lee Barrett case, which happened some two years afterwards.

Mr. Janes: The Godfrey Lee Barrett case resulted in some matters which, I think, I am sure give rise to evidence of importance and materiality and which is competent here in that after Godfrey Lee Barrett had been arrested for a violation of the Mann Act, A Ray Segal conferred with the victim of that case, one Shelly Warren, and that Mr. Segal told Miss Warren she had nothing to worry about if she would state certain things which were somewhat similar to the type in this case and said . . . 'I defended Mary K. and she did it that way'

Mr. Hammond: That is two years after it happened.

Mr. Janes: I contend that an admission two years after is as good as an admission one year after or four days and ninety-nine years after and it is an admission that constitutes an admission of what he said to Shelly Warren in regard to what he had accomplished and how he had done it in this case.

The Court: You may continue to make your opening statement. In the meantime, you can submit me little memorandums about the law so that we have it when we come to the evidence you seek to prove it by.

Mr. Hammond: May I have an objection to all of this statement he is making to the jury at this particular time, which is also highly prejudicial.

(The following proceedings were in open court.)

Mr. Janes: I will resume in regard to the Godfrey Lee Barrett case which was the case which involved charges of a violation of the Mann Act and which charges were made at a, I think by Information, some time after the Nelson case had been tried, and that shortly after those charges were made, Godfrey Lee Barrett was arrested for, upon those charges, and that those charges involved the charge of Godfrey Lee Barrett's having transported a prostitute by the name of Shelly Warren from Michigan to Minnesota for the purposes of prostitution, and the evidence will show a conversation between Miss Shelly Warren and Mr. Segal when Mr. Segal was acting or was considering acting for Godfrey Lee Barrett, perfectly proper, of course for an attorney to defend a man or to consider defending a man charged with an offense, but we expect that the evidence will show that in his conversation with Godfrey Lee Barrett's prostitute, that Mr. Segal made certain statements in regard to his connection with Mary K. Johnson's testimony in the Nelson case, that is the testimony that I went over that's referred to, as referred to in the charges of the indictment in this case."

(Mr. Janes continued with his opening statement)

At the motion of the Government, and with the consent of the defendant, the Court made an order excluding all witnesses from the courtroom during the course of the proceedings.

Mr. CHELL M. SMITH, Clerk of the United States District Court for the District of Minnesota, called as witness for the Government, and after being duly sworn, testified as follows:

Witness produces GOVERNMENT'S EXHIBIT 2, which is certified copy of Indictment in Criminal File No. 8416 United States vs. Robert Floyd Bannarn, alias Robert Bannarn, and Donald Nelson, offered and admitted in evidence without objection.

Witnesses produces GOVERNMENT'S EXHIBIT 1, which is certified copy of Indictment in Criminal File No. 8445, United States vs. Donald Nelson, offered and admitted in evidence without objection.

Indictments filed on September 4, 1953 and were consolidated for trial. The trial commenced on October 23, 1953.

Witnesses produces GOVERNMENT EXHIBITS 3 and 4, which are the Clerk's Docket Entries on the two indictments Gov. Exhibits 1 and 2.

(Following proceeding had at the Bench)

Mr. Janes: The Government offers in evidence Exhibits 3 and 4.

Mr. Hammond: There is no objection by the defendant as to foundation. Defendant does object to the exhibits on the ground that they are, in the main, wholly irrelevant and immaterial and they put before the jury many matters that should not be before the jury.

Mr. Ryan: As to material parts the witness can testify.

Mr. Hammond: Most of the matters in here, that are listed in here, are things wholly irrelevant and immaterial to the trial of this case. We have no objection to Mr. Chell Smith testifying to material matters.

The Court: What are these, the docket entries?

Mr. Janes: I might state to the Court that these are the docket entries pertaining to both of the cases that have just been referred to by the witness and excepting that there had been stricken and obliterated from them all references to Robert Bannarn pleading guilty and the matters that pertain solely to Robert Bannarn because they were not before the jury at the trial of Donald Nelson. These docket entries pertain to the Donald Nelson case. I think they are explanatory of that charged perjury.

Mr. Hammond: We have the same objection on Government's Exhibit 4 on the ground that in the main the entries therein are irrelevant and immaterial to the trial of this case.

The Court: The objections are overruled and Exhibits 3 and 4 may be received." (Government's Exhibits 3 and 4 received in evidence)

Witness testified that "docket entries" are information that the Clerk's office put in the dockets relative to the trial of the case and the arraignment and anything else that might happen in the proceedings in court.

Witness testified that the docket entries show that Donald Nelson was tried on the charges in both indictments at the same time in the same court and before the same jury; the trial commencing October 23, 1953, before Honorable Gunnar H. Nordbye. Alex Dim, Esq., now deceased, was counsel for the Government and A. Ray Segal, Esq., and Solomon Wasserman, Esq., were attorneys for Donald Nelson. Mr. Dim made the opening statement for the Government, and Mr. Segal made the opening statement for the Defendant.

Mr. Dim made the closing argument for the Government and Mr. Segal for the defendant.

On the first day of trial the following witnesses were sworn: Raymond J. McCann, Paul J. Phillipp, George J. Karel, Rebecca J. Aron, Calvin E. Taylor and Mary K. Johnson. Witness swore the witness Mary K. Johnson to the following oath:

> "'You do solemnly swear that the testimony you shall give in this case now on trial before the Court and jury shall be the whole truth and nothing but the truth so help you God.'"

Mary K. Johnson also testified on October 26, 1953. The testimony in the Donald Nelson trial was concluded on October 27, 1953; the 23rd was Friday, the 24th Saturday and the 25th Sunday; reconvened on the 26th and concluded on the 27th.

Witness produces GOVERNMENT'S EXHIBIT 6, which is an Information charging one Godfrey Lee Barrett with an offense.

"Mr. Janes: Referring to Government's Exhibit 6, the Government offers in evidence that exhibit."

(The following proceedings were at the Bench out of the hearing of the jury.)

"Mr. Hammond: The defendant objects to the offer of Exhibit No. 6, which purports to be an indictment or an Information against one Godfrey Lee Barrett wherein it purports to charge him with an offense on June 6, 1955, on the grounds that the exhibit is wholly irrelevant and immaterial to this inquiry and doesn't tend to prove any of the issues in this case and is highly prejudicial to this defendant.

Mr. Janes: There will be further testimony in regard to the Godfrey Lee Barrett matter in relationship to this case. Rather than making an offer of proof the Government would

be willing to wait until some further testimony has been brought out unless we deem it advisable, otherwise, at which time we will make such offer of proof."

(The following proceedings were in open court)

Witness produces his Clerk's docket entries in file Criminal No. 8735, United States vs. Godfrey Lee Barrett, which is marked GOVERNMENT'S EXHIBIT NO. 5, and which the Government intends to offer in evidence at a later time.

NO CROSS EXAMINATION

WITNESS EXCUSED

HELEN C. BUSSJAEGER, being first duly sworn testified for the Government as follows:

That she is the disbursing clerk in the United States Marshal's Office at St. Paul, Minnesota.

Witness produces GOVERNMENT'S EXHIBITS 7 and 8; she identifies Exhibit 8 as being a record of attendance as a witness of Mary Katherine Johnson in the case of United States versus Donald Nelson, Criminal cases 8416, 18 and 8445, Fourth Division. EXHIBIT 8 received in evidence without objection. Explains the exhibit as showing fees, subsistence and mileage paid to the witness Mary Katherine Johnson when in attendance at the above trial on October 18th to 26th 1953 inclusive. October 17th and 27th is also shown on the exhibit being the dates she spent traveling to and from her home.

MR. FRANK A. MASSEY, being first duly sworn testified for the Government as follows:

He was the Court Reporter that reported the trial of the case of United States versus Donald Nelson, and witness identifies GOVERNMENT'S EXHIBIT 7 as a partial transcript of the testimony he reported in that case; being a complete transcript of the testimony of one Mary K. John-

son a witness at those trials, and that transcript shows that Mary K. Johnson was sworn before she testified.

"Mr. Janes: The Government offers Government's Exhibit 7."

(The following proceedings were at the Bench out of the hearing of the jury.)

"Mr. Hammond: The defendant objects to the entire transcript of the testimony of Mary K. Johnson on the grounds that a great deal of it, or most of it, would be wholly immaterial to the questions we have here to decide. The defendant is only charged with certain phases of that testimony. We have no objections to the assignments, upon which the Government relies, being read to the jury, but we don't think that the whole transcript should go in.

Mr. Janes: Your Honor, the Government believes that the entire testimony is necessary in order to give an understanding of those parts of the testimony which counsel for the defendant concedes are material and proper in evidence. I think the selection of the part of the testimony would mean that the Government would not have the meaning of the testimony and it's important in relationship to itself, those parts that are specifically stated in the indictment, but they are also important in relationship to the other elements of the testimony, and I think that there is none of it that's immaterial, and I believe counsel has pointed out no particular part that might be material.

The Court: I suppose the part that is vitally important is the part alleged in the indictment, isn't it?

Mr. Janes: Definitely we consider that vitally important, but likewise, the rest of it is vitally important in order to give meaning to the words used. They, just standing alone, are meaningless, and they have to have relationship to the entire testimony in order for the jury to have before it the picture and meaning of the words that counsel concedes are material and proper.

Mr. Ryan: In the prior trial many issues were tried that were not properly in issue in that case, and the defendant has a great interest in keeping all of these side issues out of this case if it's possible, the immaterial issues, we get into the whole of this testimony, we are going to be in the same situation that the Court and counsel found themselves in before. I think further that the proper way of introducing this kind of testimony is for the reporter to read the parts of it that are material rather than for the transcript to be received, as such, and we have some authority in support of that view and then, of course, if the reporter reads the essential parts, reads the parts of it, he will be reading those in response to questions by counsel for the Government and we won't get into immaterial matters that complicate things so.

The Court: I am just thinking about the time element. How many pages is this thing?

Mr. Janes: It isn't so terribly long, Your Honor.

The Court: It just looked big.

Mr. Janes: It runs from Page 69 to 123.

The Court: Sixty pages.

Mr. Janes: But we believe that the questions and the answers given by this witness and the other questions than those that are recited in the indictment are material to the issues of this case, that they are evidentiary in this case.

The Court: May be we run into too much trouble trying to explain before each pertinent part of it to try to segregate it.

Mr. Hammond: That's right.

The Court: I think it is a waste of time to read it all. I don't know how we can fairly get out of it. So your objection is overruled and GOVERNMENT'S EXHIBIT 7 MAY BE RECEIVED IN EVIDENCE."

Witness reads to the jury Government's Exhibit 7, which can be found in the transcript of testimony in this case at pages 57 to 104 inclusive.

MARY K. JOHNSON, being first duly sworn, testified for the Government as follows:

That she has since married and her name is now MARY KATHERINE LOVELESS. That she was reared in St. Paul, Minnesota where her mother now lives, and for the last year or two she has been in the Shakopee State Reformatory for Women, having been confined there on December 13, 1955 on a sentence imposed by the Hennepin County District Court for the offense of Possession of Narcotics.

That in the fall of 1952 she lived at 707 Bradford in Minneapolis with one Robert Bannarn, and at about that time they applied for a marriage license. In November, 1952 she and Robert Bannarn made a trip to Chicago, Illinois, in Donald Nelson's automobile and on that trip they were accompanied by Donald Nelson and Rebecca Aron. She had known Donald Nelson for about a year; she wasn't sure exactly. Nelson was a cab driver. She had known Rebecca Aron about the same time. Robert Bannarn is produced in the courtroom and witness identifies him as the man she was referring to.

Witness testified that in the fall of 1953 she gave some testimony in Judge Nordbye's court room in this building; that she was sworn and called as a witness by the Government. She testified on two days. Government attorney propounded this statement to her "I am going to ask you some questions that were asked you at that trial. I am going to read the questions that were asked you at that trial and ask you if they were asked and the answers that I have been given and ask you if you gave those answers and if it was true or false. First you were asked a question "Did you at one time become a prostitute," and you answered "Yes" and

witness testified that that was a true answer but her further answer that it occurred in 1951 was false, for it occurred in the early part of 1952 in Minneapolis when she started using narcotics while keeping company with Bobby Bannarn who was also "using." Her testimony in the Nelson trial that she became a prostitute in New York was false, although she had been in New York in 1951. Her testimony that she then went to Chicago was true. She testified that her answers in the Nelson trial that she hustled in New York and Chicago in 1951 were false, although she was in those places at that time. She testified she had not practiced prostitution prior to her trip to New York and Rhode Island, although she had had relations with men prior to that time. The occasion for her going to New York and Rhode Island was that she went there with a boy from Wold-Chamberlain Air Force Base . . . she was supposed to get married in New York but she didn't.

Witness recalls the question being asked of her in the Nelson trial "Then did you get into another state?" and states that the trip began in Minnesota, and that she answered "I don't know that" which answer she says was false, and the answer she made "I couldn't tell you" was also false. Then as to the next part of her answer "I didn't look at any signs along the way" she testified that answer was true, and also that her answer "I don't even know what highway I was on" was also true. Witness testified that this trip was on the 10th or 11th of November, 1952. They started for Chicago in Donald Nelson's automobile . . . we started out around 4 in the morning she thought it was . . . we stopped in St. Paul, at my home and picked up some clothes and we drove for quite a distance and it was daylight, in the morning sometime, close to noon, and we got on a bus and in about two or three hours after we boarded the bus we got to Chicago. I had not noticed any signs or anything, but we had talked at the time about, Bobby and I had, about getting out of the car onto a bus and he had said . . .

The four of us got together in Ampey's Cafe on Olson and Aldrich in Minneapolis before the trip started, and Bobby Bannarn asked Don Nelson if he would drive us to Chicago and witness said there was some talk about money and how much Don would be wanting and we agreed upon a price and that was during the night sometime, about 12 o'clock, and about 3 o'clock she thought they got started. We first went to Becky and Don's apartment, and while there Becky and I met two fellows who wanted to see us, and while Bobby and Don waited outside Becky and I turned tricks with these two fellows in Becky's apartment . . . had sexual relations with them. We then drove over to my mother's house in St. Paul to pick up some of my clothes. My mother asked me where I was going and I told her to Chicago "and she asked me why and I said because I was going down there to work." We then left my mother's house and drove toward town and stopped at a filling station where an argument ensued over some money. We then started out for Chicago. It was still dark. Some considerable time later we changed from Nelson's car to a bus which came about because of another argument over money between Bobby and Don ..... the money to be paid for taking us to Chicago, and as a result of that argument she and Bobby Bannarn got out of Nelson's car and took a bus to Chicago. It took about three or four hours on the bus before they arrived in Chicago.

Reverting back to the questions asked in the Nelson trial, witness testified that her answer was true that it was daytime when they boarded the bus for Chicago. To the question "Was this place Fort Atkinson, Wisconsin?" asked at the Nelson trial, to which she answered "That I wouldn't know" she testified that answer was true, and to the question asked in the Nelson trial "Do you know the state you were in?" to which she answered "No" she testified that answer was true. And to the question in the Nelson trial "The state of Wisconsin?" to which she answered "No" she now testifies:

"A. Well, I can't say whether it was true or false, really, because I was in either Wisconsin or Iowa so I don't know whether it's true or false.

Q. So, in other words, you didn't know whether you were in Wisconsin or in Iowa?

A. No."

Witness testified that immediately after she got to Chicago she lived with Robert Bannarn and continued to live with him throughout the balance of the year 1952 and on into 1953. Witness testified she engaged in prostitution from the time she first got into Chicago on or about November 11, 1952 until about a year later, and that she lived with Bobby Bannarn until about October, 1953.

Reverting back to questions asked her at the Nelson trial, to the question "Did you hustle in Chicago then?" her answer "No I don't believe I did" was false, but that part of her answer "I worked at Spiegel's Department Store when I first got there" was true. She testified she worked at Spiegel's Department Store for a few days in the latter part of November, 1952. To the question "Did you hustle in Chicago since the time you made this trip? and her answer "I worked at Spiegel's for quite some time" was false as to the length of time she worked at Spiegel's. To the question "How long did you work at Spiegel's" she answered "I don't remember exactly, but it was for awhile and I was not hustling." She testified that that part of her answer relating to Spiegels was true, but her answer regarding not hustling was false. To the question "Were you working at Spiegel's during the Christmas rush?" and she answered "Yes" she testified that answer was true. To the question "Did you hustle between November 11th and December 31st" to which she answered "No sir" that answer was false. To the question "What did you earn a week at Spiegel's from November 11th or thereabouts" she answered "I believe I made $45.00 a week" she testified that answer was true.

Witness testified that she was using narcotics between September of 1952 and the end of the year both in Minneapolis and in Chicago, and also in Chicago in 1953, and her testimony in the Nelson trial that she was not an addict at that time, was false and her testimony that she was not "using" between November 11th and December 31, 1952 was false.

Witness testified that to the question "Did he Donald Nelson procure tricks for you?" and her answer thereto "No sir, never" was a true answer. To the question "Did Donald Nelson know you were a prostitute?" and she answered "I don't know how he could have" she claims was a false answer, and her further answer to that question "He never saw me do anything like that" she claims was also false, and her further answer to that question "That is what I said. He couldn't have unless he saw me," she claims was false.

To the question "And you got to Chicago about November 11, 1952 and did you see Bobby?" she answered "No, I didn't see him for a long time after that. I didn't know where he was. He was not renting the same place I was" the entire answer she testified was false. And to the question "And then from November 11, 1952 until what time did you see him or hear from him again?" and she answered "I think it was a little over a month I had not seen him at all" she claims that answer was false, as was her answer that that was the first time she saw him. Her testimony that she saw him then in Chicago was true.

After getting to Chicago she did not leave Bobby Bannarn immediately. She and Bannarn lived at the Graycell Hotel on Kimbark and 64th Street in 1952 for quite awhile and at other hotels too that she could not remember the names. They also lived at apartments and one particularly where the landlady had a little boy that they called Chuckie. They used the name of Monroe at these apartments and also the name of Bannarn. We also used the name of Carter.

Reverting to the questions in the Nelson trial, to the question "Did you do anything with reference to—before you crossed the State line?" and her answer "I don't really know if we ever did cross the state line," she claims that answer was false, and her further answer "I wasn't watching in regard to the State line" that answer was true, and her further answer to that question "I don't know where the State Line was" she claims was true, and her further answer to that question "As far as the state line was concerned I have no idea," she claims was a true answer, and her further answer to that question "I wasn't watching—I don't remember signs along the road or anything" she claims those answers were true. Her further answer to that question "I don't know even if we got across it" she claims was a false answer.

Reverting to questions asked of the witness on cross-examination at the Nelson trial, her attention was called to the question "Miss Johnson you did not go down to Chicago for any purpose of prostitution, did you?" and she answered "Not when I left, no." She now states that answer was false, and her further answers to questions of similar import "I was not thinking about it" and "Well, I didn't know what I might do except I hadn't planned on it" were all false answers. "That she was going there to work" was a true answer, but now states the work she was going to do was prostitution.

Her answer on cross examination in the Nelson trial that "she planned to go to Chicago to get away from someone" was true. She wanted to get away from a boy named Love because she had taken some drugs from him and he was looking for her. Her answer "that she had not planned on doing anything wrong" was false. Her answer to a question that she got a job when she arrived in Chicago, was a true answer. She obtained this job about two weeks after getting there at Spiegel's Department Store as a saleslady of women's clothing, and her answers in regard to her employment at Spiegel's Department Store were true answers. Her an-

swers as to the length of time she remained at Spiegels, and how often she was paid, were not true answers. Her answer to a question that she did not go back to pick up her pay-check when she left Spiegels, was a true answer, but her testimony that there were at least three checks due her when she quit, was a false answer.

Witness testified that at the time she made those false answers in the Nelson tral, she knew the falsity of those answers.

Witness testified she was subpoened to appear as a witness for the Government in the Nelson trial. At the time it was served on her she was in the Bridewell House of Correction in Chicago. She flew to Minneapolis arriving here the morning of Monday, October 19, 1953. On arrival in Minneapolis, she phoned Bobby's grandmother and asked her who Bobby's lawyer was and she said Irving Nemerov. She went to his office. Over objection, witness was permitted to testify to a conversation with Mr. Nemerov to the effect that they talked over "Bobby's" case and about the charge . . . . they read over the indictments, and after she had been there a short while Mr. Nemerov called Mr. Segal. After Mr. Nemerov called Mr. Segal, Miss Becky Aron came into the office. After Mr. Segal arrived there were four in the office and a conversation took place between the four persons. Witness testified as follows:

"A. Well, it's hard to remember exactly who took part in the conversation all the time. I mean that was four years ago, three, four years ago. It's kind of hard to remember, but I know that Becky was there and Mr. Nemerov was there, but Becky and Mr. Nemerov talked alone for awhile. They were just talking in general terms, and I talked to Mr. Segal, but Becky also talked to Mr. Segal at that time in the office.

Q. And would you tell the Court and jury, please, just what was said in the conversation that Mr. Segal took part in.

A. Well, we talked about the trip and Becky and I told Mr. Segal about the trip, about the trip to Chicago.

Q. What do you mean, what did you tell him about the trip to Chicago?

A. The truth.

Q. And what facts about the trip did you tell him?

A. Well, we told him where we had arranged the trip. We told him about talking to Don, Bobby and I made arrangements with Don and Becky to drive us to Chicago. After we got to Wisconsin there was an argument over money, which there was, we got out of the car and took a bus and that afterwards Bobby and I lived together in Chicago, and I told him about using in Chicago and I had been arrested a number of times in Chicago and that Bobby had too. And—

Q. How did you happen to tell him about using in Chicago. By using you mean using narcotic drugs?

A. Yes.

Q. How did you happen to tell?

A. We were talking about the indictment and Mr. Segal was talking to us and he told us that he was a little bit afraid that if I went up and admitted to using in Chicago that it would be bad for me because I, on the indictment, under white slavery on this conspiracy it reads—I don't know, something about debauchery and any other immoral purpose, anyway, and he said to go down there to buy drugs, which we were going there to do, would also be, could also be considered in the charge. You see, it could be an immoral purpose. And he was afraid that that would come up so that I should never say anything about using in Chicago or going there to buy drugs, but I told him I had been arrested in Chicago a number of times, and each time I was arrested it was for drugs.

Q. And was anything else said at that time?

A. No. We just talked about everything that I have said, about the trip about what happened, about the arrangements

that were made and about the trip itself, about getting to Chicago and that Bobby and I had been living together."

Witness testified the conversation came to an end, and that Becky, Mr. Segal and she left Mr. Nemerov's office. This conversation was on Monday the 19th, and the trial did not start until the following Friday. Witness testified that she went to Mr. Segal's office sometime during that week . . . either Tuesday, Wednesday or Thursday, she could not remember which date, at which time she testified she had a conversation with Mr. Segal. No one else was present. She testified to the conversation as follows:

"A. Well, again we went over everything that happened, and I told Mr. Segal about everything, and he told me, we went over it, you see, and in the indictment there were charges listed, different things in the indictment, and he told me it would be best not for me to say anything about Bobby, me being with Bobby and starting to prostitute after I had met Bobby, that at some date before I had met him that I should say that is when I started prostitution. So I told them I had been on the East Coast and we decided that was a good time for me to begin to prostitute, at least it wouldn't show I was with him when I started out to be a prostitute. So that story came. And then we talked about Bobby and I living together at different times, and I couldn't very well say he and I were living together before we left for Chicago so . . .

Q. Now you say 'I couldn't very well' was that part of the conversation that you were talking about?

A. No. I mean we were talking. I can't remember the words that were said.

Q. Who said that type of thing?

A. Well, Mr. Segal and I both did. I mean we talked it over, you know. I mean, and he said that, well, he was being tried for white slavery, I wasn't. It didn't make any difference what I had done. It was what he had done.

Q. By 'he' Mr. Segal meant whom?

A. Robert Bannarn.

Q. Now would you go on, please?

A. And so he and I, we decided, we talked it over and Mr. Segal thought it was best if I didn't say anything about he and I, about Bobby and I living together at that time. So I was supposed to say in Court that I was living by myself when I lived at 707 and when I lived at other places. And then we talked about the trip and, of course, Don was a cab driver so he said be sure that it was money that he was taking, for which it was, but I told Mr. Segal about meeting these two fellows and Becky and I going with them before the trip came up. But I wasn't supposed to say at any time that Don knew what I was doing, that I was turning tricks or anything like that. That—

Q. When you say 'I wasn't supposed to say' • • • who was saying that part of the conversation?

A. He said I shouldn't say that I was—that I was—that I ever did anything like that in front of Don. He also said that, not to mention, you see Becky and Don were going to stay in Chicago for a short while after we got there and Becky was going to work for a little while, but he said that I shouldn't say that either, I couldn't mention that, and then he said that after we got to Chicago I couldn't admit to Bobby and I living together down there because that would show that we went there for an immoral purpose to live together and also as far as using drugs was concerned I couldn't say that I, he said I couldn't say that I lived with Bobby or that I was using drugs at the time."

Witness testified that she may have met with Mr. Segal on one other occasion but she could not remember.

The trial started on Friday of that week. She testified for the Government and was questioned by Mr. Dim. When the court recessed on Friday she had not completed her testimony and was held over until Monday. She saw Mr. Segal again after the trial on Friday. They met in Mr. Nemerov's office; she, Becky Aron, Mr. Segal and Mr. Nemerov. They

first went out to dinner at a restaurant on Hennepin Avenue close to Mr. Nemerov's office, and the witness testified—

"* * * and we didn't talk a lot about the trial, but you see Becky had already been on the witness stand, and, of course, I had, too, and Mr. Segal was a little unhappy with Becky. She hadn't gotten up there and said what she was supposed to.

Q. Did Mr. Segal say anything in particular as to what part of her testimony it was she wasn't supposed to have said?

A. You see, we weren't supposed to admit, I forgot this, we weren't supposed to admit, Becky or I, we had ever crossed the State line. Mr. Segal told us, 'It was dark, wasn't it' We said 'Yes.' He said how do you know we were in Wisconsin. We said we knew we had to be some place. I knew. I had been to Chicago enough times to know I couldn't have been very far from Chicago, I had to be out of Minnesota to be four hours away from Chicago when I got on the bus. Well, he said, "you don't know you were in Wisconsin, do you?' Well, I didn't know. I was either in Wisconsin or Iowa, one or the other, but I didn't know where. He said 'Don't admit where you were' And Becky had gotten on the witness stand and said that we were in Fort Atkinson, Wisconsin and she wasn't supposed to say that.

Q. And was any other subject discussed that Friday night that you know of?

A. Yes. He told me that I had done a very good job and he was pleased with what I had said, but he was very upset with what Becky had said."

Witness testified that she made an appointment to see Mr. Segal at his office the following day, Saturday morning or Saturday afternoon. She could not remember whether any office associates of Mr. Segal were present at the time. She testified to a conversation with Mr. Segal on that occasion as follows:

"A. Well, we went over again everything about what I was doing, what I hadn't testified to already. We went over what I would be testifying to and the following night, something had come up, they started asking me, I believe, the following Friday, maybe I was—maybe I am wrong. Maybe I just heard about it, but it was about me living at 707 Bradford, and * * *

Q. Had you lived at 707 Bradford?

A. Yes I had. And Howard Walker was the landlord there when Bobby and I were living there, and Mr. Segal said 'Now, if they ask you anything about the place at 707 Bradford I don't want you to say that I own the house.' He owned the house. He didn't want me to say anything about him owning the house, that if I said anything I should say he was telling me not to admit Bobby and I lived together, so that would mean I had to pay the rent. Well, I hadn't paid the rent. Bobby had paid the rent, but I had to say I paid the rent and I paid it to Mr. Walker and I didn't know Mr. Segal was the owner of the building because he said that showing any kind of a connection between me, a Government witness, and him, the defense attorney, wouldn't look good.

Q. Were any other topics discussed that morning?

A. Well, we talked about Spiegel's Department Store. He asked me if I had ever worked in Chicago and I said yes, I had worked a short while at Spiegels. He said 'For how long?' I said 'I don't remember, just a few days.' He said, 'Did you give them a Social Security number?' And I said 'No, I did not.' He said 'Did you give them your right name?' I said 'I don't remember what name I gave really.' He said 'Well, if they ask you where you worked down at Chicago you can say you worked at Spiegel's.' I don't know, there were so many conversations about so much of the testimony: that conversation either could have been during the middle of the week or that Saturday, but I don't remember which time it took place.

Q. Were there any other topics discussed that day that you recall?

A. Not that I can recall."

Witness testified that Court resumed on Monday morning; Mr. Dim continued to ask questions of her, and then she was cross examined the following morning. She testified she had known Mr. Segal prior to the week of the trial; she worked in a place where Mr. Segal had a lot of friends; it was Jimmy Baker's place, a restaurant on Olson Highway in Minneapolis. She testified—

"A. Mr. Segal would be in there. I don't know, sometimes once a week, then I wouldn't see him sometimes for quite awhile. I can't tell you how often he was there, but I used to see him and I was introduced to him, I believe by Jimmy Baker. It may have been somebody else, but most likely I think it was Jimmy Baker. He was in Jimmy's a lot and I used to see him and when I was living at 707 I used—he used to come there once in awhile. I never talked to him but I knew him. Yes, I used to talk to him. He was no bosom buddy of mine, but I used to talk to him and we were friends."

Witness testified she lived at 707 Bradford for about a month in the fall of 1952 before the trip. It is an apartment building and she had a room there. She rented a room from one Howard Walker who had the upstairs apartment. Over objections she was permitted to testify that in the first week of September of 1952 the police broke the door of her apartment and entered and arrested she and Robert Bannarn.

CROSS-EXAMINATION

By Mr. Hammond:

Witness testified she is 23 years of age, presently confined in Shakopee Reformatory; her sentence expires in December, 1957. She was reared in St. Paul at 1262 Hubbard Street, which is in the Hamline district. She completed eleven grades in school; leaving high school when she was 16. Her mother lives at the above address. She has two older

brothers. She has one illegitimate male child now age 6 that is now in the care of the Welfare Department, and she has a second child, a girl, born to her while married to Mr. Loveless, a colored man, who is the father of the child. She has not seen Mr. Loveless since November of 1955. Her mother is caring for this child.

Witness testified she finished her schooling in 1950; that she worked at a candy stand at a theatre for awhile. In 1951 she worked in a Chinese restaurant as a waitress. In the fall of 1951 she went to Narragansett, Rhode Island with a boy. She was not married to him. She remained there about a month, and then went to New York where she remained with friends for a week or two weeks. She then went to Chicago by train where she remained maybe two days, and then she came back to the Twin Cities. In January of 1952 she met Bobby Bannarn, a colored gentleman she guessed, while working in Ampey's Cafe on the north side of Minneapolis where colored people live. The restaurant was run by a colored gentleman. She started to associate with Bobby Bannarn and a short time thereafter on February 25, 1952 she was arrested in St. Paul on suspicion of narcotics. She had used narcotics prior to the time she met Bobby Bannarn . . . that is marijuana which is smoked like a cigaret. Heroin you inject into your veins with a needle. In March of 1952 she was arrested with Bannarn at the Minnesota Hotel in Minneapolis where she and Bannarn were registered as man and wife at which time she was turned over to the Government as a witness. She testified she never found out who she was supposed to be a witness against; she appeared before the Grand Jury and asked her if she knew Robert Bannarn and she admitted she did, and "they put me down." They never asked me about narcotics. When she was arrested that time she was given 30 days or a "floater." "They kept me in jail about four months and when I got out I didn't have to 'float' because I had served the 30 days." Floater means you are directed to leave town within 24 hours. While in jail I saw

Mr. Caswell of the United States Naroctic Bureau on two occasions.

After she got out of jail on that commitment, she went to Chicago with Robert Bannarn . . . she thought by train. She thought it was in May of 1952. She lived with Bannarn in Chicago. She was arrested in Chicago in June of 1952 in a vice roundup. She had been working as a prostitute. She might have told the arresting officers that she was working as a waitress. A lot of times she didn't tell them her right name so she probably lied about her work. In June of 1952 I was arrested at the Grace Hotel in Chicago by the State's Attorney's men in Chicago . . . it was the Vice Commission out of the State's Attorney's office. They had eight charges against me . . . city and state soliciting . . . a city and state disorderly . . . inmate of a disorderly house and patron of a disorderly house. I plead not guilty and I was released.

Witness testified she returned to Minneapolis the latter part of August of 1952. Bannarn came first and then I followed later. We lived together at his grandmother's house for awhile and then we moved to 707 Bradford where we rented a room from a man named Howard Walker, a colored gentleman. It was just a bedroom. Robert Bannarn was not working at the time and she was plying her trade as a prostitute. They were both using heroin at the time. While at this Bradford Street address they obtained a marriage license to marry. It was their intention to get married. They had no other purpose in mind for obtaining the license. She believed Bannarn was eligible to get married at the time, although he had been married before. While at 707 Bradford the morals squad, on or about September 7, 1952 appeared at the apartment and arrested she and Bobby Bannarn. She received a 30 day sentence and Bannarn received 90 days. She got out of jail on October 7, 1952, and Bobby was out in November of 1952. She testified they tried to have her committed to Willmar State Hospital . . . she had a hearing

in St. Paul, and then she went back to her mother's house. Mr. Caswell and her mother instituted the proceedings to try to cure her of the heroin addiction, but she opposed it and was released.

Witness testified she then remained at her mother's house. Her mother was working but she did no work. She could not remember whether from October 6, 1952 to the date she left for Chicago whether she remained at her mother's house. She frequented these places in Minneapolis and continued to use narcotic drugs.

Witness testified that she and Bannarn had planned to return to Chicago before they were arrested at 707 Bradford. We lived in Chicago we didn't live here. We came here to attend Robert Bannarn's father's funeral. She then testified that she and Bannarn had no definite plans to return to Chicago.

Witness knew what the law was with respect to traveling in interstate commerce for immoral purposes. She knew that he couldn't be carting me over State lines all the time or somebody would catch up with us some day, and she knew that the Government in order to prove it would have to have me tell them the purpose of the trip. She again states that they made no definite plans for going to Chicago, either by auto or by train. She denied that they had planned to leave early in the morning so that no one would observe them leaving by automobile. She supposed there were trains running between Minneapolis and Chicago. She didn't ascertain whether buses were running to Chicago, and they made no effort to ascertain what was running. She had funds and Bobby Bannarn had funds, and there was nothing stopping them from taking a train or bus to Chicago. She was not apprehensive that someone might see them leaving for Chicago. They arrived at her mother's place about 2 or 3 in the morning. It was dark at the time. She testified she did not tell her mother she was going to Chicago to get work for the

purpose of laying an alibi in case her mother was questioned about the purpose of her trip to Chicago. She testified that it was not part of her plan and scheme to go to Spiegels and apply for a legitimate job to cover up the purpose of the trip, so that the Federal Government agents would be misled in their investigation. She never worked in Minneapolis as a salesgirl when she had the opportunity. And when she was arrested by the police in Chicago she testified she told them she was working at Spiegels. She testified that that was not all part of a plan that she and Robert Bannarn had so as to fool the Government as to the purpose of the trip.

Witness testified that she was arrested on November 30, 1952 in Chicago, and she told the officers she was working at Spiegels at that time, although she did not know whether she was working there at that time. When she was arrested in Chicago on December 31, 1952 she might have told them she was working at Spiegels.

Witness was first interviewed by the F.B.I. agents in November, 1953 in connection with the trip made to Chicago in November, 1952. She had experience with these agents in the past at other interviews in connection with white slave matters. They asked me about Bobby Bannarn and trips we made and I would say I didn't know him and I didn't know anything about him. She was protecting him and didn't want to involve him in any White Slave traffic prosecutions.

Witness testified she was arrested many times in Chicago in 1953 by the Morals squad or Vice Squad. She did not remember telling the police officers on one occasion that she was working for the Telephone Company as an information clerk.

Witness testified she lived with Bobby Bannarn in Chicago from the fall of 1952 until April of 1953. During all that time she was using narcotic drugs. She was picked up by the Chicago police from time to time and charged with

being a "loitering addict" but was never convicted of those charges and was discharged immediately, because the police had no evidence other than scars on the arms "and you don't have to show any judge marks on your arm so you are discharged. Once in a while they switch it and make it "disorderly narcotic" or "soliciting" but I wasn't arrested with anybody and there was no other evidence I was discharged.

In April, 1953, I was arrested and turned over to the United States Narcotic Bureau in Chicago and brought up here to testify for the Government in a narcotics case. I was supposed to have bought drugs from this man, but when I got here I testified I didn't know anything about the man and had not bought drugs from him. The case was not dismissed because the Government had proof of a sale to another person.

I remained in Minneapolis then, but two days later I was arrested by the City police and was given 90 days in the Workhouse for a narcotics violation. However, before getting the 90 days I was given a "floater" but before I could leave town they picked me up and sent me to the workhouse. When I got out of the workhouse, I returned to Chicago which was in August of 1953, Bobby Bannarn and I took the train on that occasion at 7 o'clock in the morning, and there were five or six FBI agents at the train when we left and there were four or five at the train station in Chicago when we got there. It was that trip that Bobby Bannarn was later charged by indictment with transporting me in interstate commerce for immoral purposes. Bannarn and I lived together in Chicago and up to that time had not married. We had also taken out a marriage license in Chicago. It was some time in 1952, but were not married on that license, nor at any time.

She was arrested twice in Chicago in September, 1953 by the Chicago police in vice investigations. During the first part of September, 1953, I appeared before the Grand Jury

in St. Paul and testified about this September, 1952 trip with Bannarn, but testified to no other trip, and do not recall signing any statements for the FBI before testifying. Witness identifies DEFENDANT'S EXHIBIT A as a statement she gave to the FBI Agents on or about the date it bears May 21, 1953 regarding the trip she made from Minneapolis to Chicago in November of 1952. DEFENDANT'S EXHIBIT A offered and received without objection. (Statement is read to jury)

Witness testified she didn't mention Bannarn's name in that statement because she was protecting him. Both she and Bannarn hired Nelson to take them to Chicago, although her statement says she hired Nelson. She was not trying to mislead the FBI by stating to them that she hired the cab and not Bannarn and that she took him to Chicago and not that Bannarn took her to Chicago. She was concerned about the police following them for a number of reasons, one being that they had marijuana in the car. They were not apprehensive about White Slave Traffic Act violations because at that time they were nowhere near the state line. She told the FBI in that statement in 1953 that they were in the State of Wisconsin and headed for Chicago. Witness stated that it was her intentions to cheat Donald Nelson out of his fare if she possibly could get away with it. When she testified before the Grand Jury regarding this trip, she testified substantially as set forth in her statement Defendant's Exhibit A. She did not mention Bannarn's name in her testimony . . . she was protecting only Bannarn.

When she came to Minneapolis from Chicago to testify in the case of United States vs. Bobby Bannarn, she represented to the Government that she was without funds so that she could get an advance of funds, and funds were advanced to her to make the trip. She did not inform the United States Marshal that she had $170.00 of her own funds at that time. She took a plane to Minneapolis on that trip and reported to the U. S. Marshal's office at Minneapolis on

arrival. She also reported to the U. S. Attorney's office and they just told her the case was continued until Friday and that "I was free until Friday." They did not question me about my expected testimony. I did not go to see Bannarn in the Hennepin County jail that day, but went to Mr. Nemerov's office, where she found out that there were four charges against Bannarn covering different trips she had made with him, one of which was the railroad trip in which the FBI agents were in the railroad stations. She had not testified before the Grand Jury about that trip. One was a conspiracy count with Donald Nelson, one was the Nelson trip of transportation, and one other count against Bannarn. Nemerov told her that in view of all the facts, he thought it best that Bobby plead guilty. I did not want him to plead guilty. Nemerov said he wanted me to talk to Bobby about pleading guilty, and that's all Nemerov said. Bobby didn't plead guilty until the morning of the 23rd when Nelson and Bannarn were going on trial. After that plea, then the Nelson trial commenced.

Witness testified that she did not know when she testified that Nelson was going to testify that the town where she and Bannarn left his cab and got into a bus was Tomah, Wisconsin. She knows that Donald Nelson did so testify and the jury heard that testimony. After she and Bannarn left Nelson's car at Tomah, Wisconsin, neither Nelson or Becky Aron visited her in Chicago, nor did she write to Nelson and between the trip of November, 1952 and her return in 1953 did she advise Nelson what she was doing in Chicago.

After the trial of Nelson in October, 1953, she remained in Minneapolis and lived at various places in the north end of Minneapolis. In December, 1953 she was arrested in Minneapolis in connection with one Calib Jones who had possession of narcotics and so charged and she was a witness against Jones. She received a sentence of 90 days in the workhouse for lewd and indecent conduct and placed on pro-

bation. The sentence was revoked on January 30, 1954 and she served the 90 days. In May, 1954 she married one Loveless a colored gentleman at Norwood, Iowa, and she lived in Minneapolis with him. She did not know Mr. Loveless' occupation. She lived with him until arrested on September 13, 195', for soliciting prostitution, and she was given 90 days in the workhouse. She was pregnant with child at the time. "When I got out of jail Loveless was in jail, so I went home to my mother and stayed there until the child was born. I did no legitimate work while at my mother's home, and I used narcotic drugs while I was there, which I procured at 397 Carroll Avenue, St. Paul, which is where my husband lived. He was an addict. I ran up a taxi bill of over $100 going to and from that place." She is still married to Loveless, but she doesn't know where he is.

RE-DIRECT EXAMINATION

The "friend of yours" referred to in Defendant's Exhibit "A" was Robert Bannarn. Witness testified that she testified at the Nelson trial differently from the statement with respect to Donald Nelson because Mr. Segal told me that under no circumstances was I to say that Don knew anything about my hustling activities "that he didn't know anything about what I had done, that he had never seen me doing anything like that and to deny it." With respect to the statement in Defendant's Exhibit "A" "Don drove us into Wisconsin" being different than her testimony at the Nelson trial, the witness testified—

"Well, Mr. Segal asked me did I know where I was and I said 'Well, I wasn't positive but I just assumed I was in Wisconsin.' He said 'well, when you get up there you can't assume anything.' He said 'you don't know where you were, do you.' And I said 'No.' He said 'You might have been in Minnesota.' I said 'I know I was not in Minnesota.' He said 'But you don't know you weren't.' Well I said 'I could say that.' He said 'Say you didn't know where you were, you

might have been driving around the block all the time. It was dark.'

The trip by train with Bobby Bannarn was made after the statement Defendant's Exhibit "A" was given. In the statement (Defendant's Exhibit A) I stated we were supplying Nelson with marijuana cigarettes. Bobby and I had bought these cigarettes. Her testimony was different in the Nelson trial because—

"Well, we talked about narcotics, and I told Mr. Segal we both were using before we left and after we got there and he said not to say anything about going to Chicago to buy drugs; if we were going down to Chicago to buy drugs that would show that it could be an immoral purpose as on the indictment it said other immoral purposes and buying drugs might be one, that he wasn't sure, so it would be better if I said we weren't using at all."

Witness said that the statements she made in Defendant's Exhibit 4 were true . . . she just left some things out.

RECROSS-EXAMINATION

Witness testified that Mr. Segal told her to say "maybe you were just driving around the block." Witness said she didn't know how far they had driven from the time they left Minneapolis until they got off in Wisconsin. She didn't testify in the Nelson case that she hired Nelson to drive them to Chicago.

In November, 1952 on this trip to Chicago she was using approximately four capsules of heroin a shot, and she would take about four or five shots a day. "When in Chicago in the spring of 1953 I used an awful lot then. Heroin is a drug that you have to keep increasing the dose to get the proper effect you wish to acquire. There is a distinction between a 'user' and an addict. When you are 'using,' you just have it once in awhile. After you become physically addicted that's what I mean . . . you have a habit." She became addicted when

she was in Chicago. From 1953 on she was an addict at times. She was an addict in 1955 when she went to Shakopee Reformatory.

MARY JO RICE, being first duly sworn, testified for the Government as follows:

That she is presently residing in the Minnesota State Reformatory for Women at Shakopee being under sentence for Second degree forgery; being sentenced from Minneapolis. She is serving a sentence of nothing to ten years and started her sentence on November 23, 1955. Mr. A. Ray Segal acted as her attorney in March of 1954 in securing her release from jail by posting bail. Witness claims she had a conversation with Mr. A. Ray Segal about Mary K. Johnson and the Nelson trial at that time, and that he "made the statement that you would have thought that Mary K was telling the truth on the witness stand, she was a cool and calm witness, to put it in those words." Witness had no conversation with Mr. Segal about what Mary K. Johnson testified to. Over objection witness was permitted to testify that this conversation took place while Mr. Segal was talking to a girl that was interested in a White Slave case in which one Carlisle was involved; that the conversation took place in an apartment of the girl who was interested in hiring Mr. Segal to represent Mr. Carlisle. Witness stated that she could not repeat the actual words used by Mr. Segal in that conversation . . . that Mr. Segal was more or less boosting his own morale up . . . he said that you would have thought that she was telling the truth on the stand by the way she acted.

IRENE M. BOWDE, being first duly sworn testified for the Government as follows:

That she is married and lives at 6226 University Avenue, Chicago, Ill., which is an apartment building which she manages. She managed it in December of 1952.

Witness identifies GOVERNMENT'S EXHIBIT 9, which is a brown covered sewn booklet as a book that she keeps records in of people that moved in and out of the apartment in the regular course of her business. Witness identifies in courtroom Mary K. Johnson, and Robert Bannarn, and testified they rented a place in her building in November of 1952 and stayed there until December 26, 1952. Their stay was recorded in Government's Exhibit 9 on the first page. GOVERNMENT'S EXHIBIT 9 offered and received without objections. The entry shows tenancy commenced November 14, 1952. Robert Bannarn of Detroit, Michigan, and the date of moving out is December 26, 1952. They rented it as man and wife. It was Apartment 3 and they lived there as man and wife. She has a grandchild named "Chuckie" and Chuckie used to visit with them.

CROSS EXAMINATION

Witness received the rent from Robert Bannarn.

LOLA E. SMITH, being first duly sworn, testified for the Government as follows:

That she is married and lives at 4041 South Ellis Avenue, Chicago; that in November of 1952 and on into 1953 she was manager of the St. Regis Hotel at 4041 Ellis Ave. in Chicago. She first became manager in July of 1952. Witness identifies Robert Bannarn and Mary K. Johnson as persons she has seen before and at the St. Regis Hotel, but she could not give the time. They were registered at the hotel as Mr. & Mrs. Sidney Monroe.

ERNEST W. MONTEEN, being first duly sworn testified for the Government as follows:

That he is a police officer of the City of Chicago, and at present works in the Records Division of the Police Department and as such is one of the custodians of the records on arrests and he has produced the records covering the arrests

of Mary K. Johnson. Witness identifies GOVERNMENT'S EXHIBITS 10 through 22 as "Arrest Cards" on Mary K. Johnson from 1950 to date (photostats substituted) GOVERNMENT'S EXHIBITS 10 through 22 RECEIVED WITHOUT OBJECTION. These cards are made out when they make out an arrest slip and at the same time they make out a corresponding card which is called the disposition card and that is put in the file at the station and held in the station until such time as the prisoner goes to Court and the case is disposed of. When the case is disposed of, they enter on the back the disposition of the case, the date and the judge and then it is sent to the Records Department and filed in our office.

Witness identifies GOVERNMENT'S EXHIBITS 23 through 33 as photostatic copies of vagrancy reports found on Mary K. Johnson for the period involved. GOVERNMENT EXHIBIT 34 is identified by the witness as a summary of Exhibit 23 through 33 and shows the police officers at a quick glance what her record is. GOVERNMENT EXHIBITS 23 through 33 RECEIVED IN EVIDENCE WITHOUT OBJECTION. Government withdraws Government Exhibit 34.

Witness explains the exhibits received as follows: Government Exhibit 10 shows an arrest on May 10, 1952 at 65th and Ingleside, Chicago by Officers McCarthy and Heim for narcotic investigation and loitering; turned over to Federal Narcotic Bureau on May 12, 1952. She stated to the officers that she was a waitress, unemployed. Government Exhibit 11 shows an arrest June 4, 1952 for vice investigation at the Grace Hotel; she was discharged on June 5, 1952 by Judge Napoli. She claimed her employment was waitress. Government's Exhibit 12 shows an arrest on November 30, 1952 at 4:20 a.m. charged with loitering. She was discharged on December 2, 1952 by Judge Weis. Employment was stated as "Salesgirl at Spiegels" Government's Exhibit 13 shows an arrest on December 31, 1952 charged with loitering; dis-

position "Ex parte five and five" which means she posted bond of $10.00 and didn't show up in court. Record shows her employment as "Salesgirl at Spiegels." Government's Exhibit 14 shows an arrest on January 7, 1953, at 7:55 p.m. charged with "loitering prostitute or addict." On January 9, 1953, she was discharged by Judge Gorman. No employment is stated. Government's Exhibit 15 shows an arrest on January 24, 1953, charge, loitering narcotic. Disposition shows she was discharged on January 27, 1953, by Judge Gorman. Employment is shown as "Information-Telephone Company." Government's Exhibit 16 shows an arrest on January 29, 1953, charge of loitering narcotic and solicitation-prostitution. Disposition shows she was discharged on January 30, 1953, by Judge Gorman. No employment is shown. Government's Exhibit 17 shows an arrest on February 3, 1953 at 4:00 a.m., charge of soliciting and loitering. Disposition shows discharged on February 7, 1953, by Judge Napoli. No employment is shown. Government's Exhibit 18 shows an arrest on March 13, 1953, at 2:00 a.m. in a vice and narcotic investigation. She was discharged on March 16, 1953, by Judge Butler. No employment shown. Government's Exhibits 19, 20, 21 and 22, show similar arrests.

Witness explained the vagrancy reports, beginning with Government's Exhibit 23 is a "character report" sent in by the police office that made the arrest, showing who her associates and friends are and what she is in the habit of doing and who she lives with, and matters of that nature.

CROSS EXAMINATION

Witness is asked to explain the Chicago procedure of making numerous arrests such as has occurred to Mary K. Johnson, and a discharge without apparent punishment, and he states "They go and take them to Court and they present their case in Court and the Judge decides whether they are discharged or to be fined or so forth. The officers don't protest or make any effort to find out why. It's just his business

to present the case and if he is discharged it is up to the Judge, or not guilty."

Witness testified that in all the records Mary K. Johnson never received a sentence other than the dispostion shown "Ex parte five and five" which means bail forfeited.

RE-DIRECT EXAMINATION

Witness states that Government's Exhibit 21, shows an arrest on September 22, 1953, charge of "vice investigation" and soliciting. She was found guilty on one charge and fined $100.00 and costs.

RE-CROSS EXAMINATION

Up to that time, September 22, 1953, she was never convicted of anything.

BERNARD W. BEHRENDT, being first duly sworn, testified for the Government as follows:

That he is a police officer of the City of Chicago and has been such for the last fifteen years, and during the latter part of 1952 and 1953 he was assigned to the vice and narcotics squad, working on the south side of Chicago. 6626 University Avenue is within that district.

Witness became acquainted with Mary K. Johnson; "the first meeting was on November 30, 1952. About 4 a.m. on that date I noticed a girl whom I later found out to be Mary K. Johnson loitering along the streets as if to pick up some fellows, stopping them and asking for a match, or looking at cars going along the street like she was looking for a ride. A green Plymouth convertible pulled up to the curb and Mary K. Johnson got into the car and proceeded east and my partner and I followed and picked Mary K. Johnson up, and upon questioning her why this fellow started up and drove away from us. We placed her under arrest.

On February 3, 1953, at 4:00 a.m. we picked up Mary K. Johnson at 6650 Ellis Ave. for soliciting and loitering on

the streets . . . she was attempting to have sexual intercourse with a man in an automobile at that location. We arrested her. We also arrested her on March 13, 1953. We by that time knew her habits. She was picked up in a vice and narcotic investigation and upon questioning she admitted using narcotics, Her arms showed needle—We first observed needle marks on March 13, 1953. On April 10, 1953, we arrested her at the instance of the Federal Narcotics Bureau. Her arms showed several more needle marks and some discoloration."

CROSS EXAMINATION

When they arrested her on November 30, 1952, he figured they had reasonable cause for believing that she was soliciting as a prostitute, and he arrested her and charged her with the offense of "loitering" which covers a great many things, and he took her to Court the next day and was present before the judge. Witness testified that he told the Judge what happened and Mary K. Johnson said "that she was on her way home." In his opinion she did not tell the truth to the Judge, but the Judge saw fit to discharge her. Also the arrest on February 3, 1953, we felt we had reasonable cause for arresting her and charging her with the offense of loitering. We took her before the Judge the next day and * * * "She made the statement that she wanted a ride home and she waved this fellow down and then he pulled into the curb at this location and started to make love to her" and the Judge discharged her. She made a nice appearance before the Judge . . . dressed up and looked like a little College girl. We didn't examine her on the first two arrests as to use of narcotics, but her arms showed use of narcotics in March of 1953. Narotics can be injected into the body at other places than the arms . . . any place that they can get into a vein. At this arrest in Mareh of 1953, it was a general roundup of prostitutes and addicts. At this time the Judge warned Mary K. to go back to Minneapolis. She apparently did not return to Minneapolis for later we were notified by

the Narcotics Bureau that they had a warrant for her and we went to her hotel and picked her up on the warrant. This was on April 10, 1953.

RE-DIRECT EXAMINATION

The area where the arrests were made of Mary K., covered about three-fourths of a mile.

RE-CROSS EXAMINATION

When we arrested her on November 30, 1952, she told us she was working at Spiegels. We made no check to ascertain the truth of that statement.

JAMES P. DRISCOLL, being first sworn, testified for the Government as follows:

That he is a police officer of the City of Chicago, having been such for twelve and one-half years, assigned to the Sex Squad. In 1952 and 1953 he was on the vice squad. His territory included 6226 University Avenue and 925 E. 63rd Street.

He became acquainted with Mary K. Johnson and has observed her about the courtroom. First met her in the early part of December of 1952 when he noticed her in Court. We observed her in our district and saw her give signs and motions to passing cars. On December 31, 1952, we noticed her loitering on the streets and we noticed her make motions at passing cars with a scarf . . . these different motions are quite common with the girls and meant something to us in the trade of prostitution. We observed her about ten minutes and then announced our office and placed her under arrest and brought her in for investigation. She was placed under $10.00 bail which she forfeited and the disposition is shown on the records as "Ex parte $5.00 and $5.00."

The next time we saw her was on the 7th of January, 1953, about 8:00 p.m. and we observed the same actions by Mary K., trying to attract the attention of passing motorists. We

placed her under arrest, and at that time we first noticed that she was a user of narcotics. She had "crow marks" on the arms . . . the black veins which the needle leaves after using it a certain length of time. The veins collapse and they have to keep using a different position and after using it for any length of time they get long black marks in their arms. She admitted to us she was a user. She was discharged by the Court on January 9, 1953, by Judge Gorman. Dickson, my partner, appeared in court. The next time we saw Mary K. Johnson was on January 24, 1953, at 9:35 p.m. at the same location on East 63rd Street; she was going through the same actions attempting to attract passing motorists, and we placed her under arrest. She was discharged by Judge Gorman on January 27, 1953. My partner Richard Dickson went to Court on that occasion.

In connection with his work for the Chicago Police Department, he has had a great deal of contact with narcotic addicts. He states that it is not possible to use heroin and not be an addict . . . a person that uses any amount of heroin cannot help but become an addict. Mary Johnson stated she was using heroin and the marks on her arms were consistent with her statement of the use of heroin.

CROSS EXAMINATION

The first time he arrested her was on New Year's Eve December 31, 1952 and as an old police officer he recognized signs and actions that told him that Mary K. Johnson was plying the trade of prostitution, and he felt he had reasonable cause for arresting her at that time. She admitted to us that she had no means of support . . . that she was hustling, but she didn't show up in Court the next morning and forfeited her bail. The next time on January 7, 1953, after the arrest, she was taken before the Court, and Mr. Dickson, my partner, appeared in Court the next day, and later told me that the Judge gave her a warning to keep off the streets. Mary K. Johnson did not admit to the Judge

that she was guilty of anything wrong. On January 24, 1953, after the arrest, Mary K. Johnson entered a plea of not guilty and the evidence was held insufficient and she was discharged. The witness further testified—

"Q. Now you state you have a lot of experience with narcotic addicts.

A. That's right.

Q. Are they usually truthful people that tell the truth?

A. They would rather tell a lie than tell the truth."

RICHARD T. DICKSON, being duly sworn testified for the Government as follows:

That he is a policeman for the City of Chicago, and has been such for 24 years and he has been on the vice squad. He was on the vice squad in 1952 and 1953 and worked with Mr. Driscoll. While on this vice squad he became acquainted with Mary K. Johnson, and with Mr. Driscoll, arrested her on several occasions. First arrest was on December 31, 1952. Witness describes actions of Mary K. Johnson as testified to by Mr. Driscoll and arrest and posting of $10.00 bail by her, and forfeiture of bail for failure to appear. Witness does not recall looking at her arms on this occasion. On January 7, 1953, she was again arrested, and when he appeared in Court the next morning Mary K. Johnson plead not guilty and she was discharged by the Court.

CROSS EXAMINATION

She stated to us that she was working at Spiegels, and we took her word for it. On the January 7, 1953, arrest, she plead not guilty and told the Judge that she was not plying the trade of prostitution. She did not make a good appearance on this occasion . . . she looked tough, and scantily clad.

RE-DIRECT EXAMINATION

On the January 7, 1953, arrest she looked as though she

had been taking narcotics; she was apparently under weight which narcotics directly contributes to.

RALPH PULVER, affirms to tell the truth, testified for the Government as follows:

That he resides in Chicago and is employed with Spiegel's Incorporated in the personnel department. Spiegel's is a merchandising mail order and retail firm. It had a retail store in 1952 at 925 East 63rd Street in Chicago. He examined the records of Spiegels and found no record of anyone who was named Mary K. Johnson employed at the store during a short period of time in 1952. Unless a record was sent in by the store there would be no evidence such person had ever worked for them.

ANASTASIA CARLSON, being first sworn, testified for the Government as follows:

That she lives in Chicago, Illinois, and in 1952 and 1953 was employed by Spiegels at its store, 925 East 63rd Street . . . Store 15. This store was discontinued in 1954, I was manager of the store. The merchandise sold was ladies' ready to wear. Witness identifies Mary K. Johnson and states that she hired her in November of 1952 for the Christmas rush business. She had a "beautiful approach" and I gave her an application to fill out and showed her around the department. She was very nice and courteous to the people that came in. In looking over the application I noticed that there was no Social Security number on it and she promised to bring it in the next day. The next day she again forgot it. The third day she didn't show up and I haven't seen her until I met her at the Grand Jury hearing in St. Paul. The personnel records were held in her files. Her rate of pay varied with bonus and commission. She was receiving somewhat higher pay than the other girls. On one rainy evening there was a gentleman waiting for her after working hours. She told me previously that her hus-

band was going to call for her with an umbrella, and witness identifies Robert Bannarn as the man who called for her on that evening.

Witness also observed that while Mary K. Johnson was working she left the floor more often than the other girls.

CROSS EXAMINATION

Mary K. Johnson presented a very likeable front and met people very well. Her appearance did not indicate that she was a narcotic addict or that she was a prostitute. Her average earnings would be about 35 to 40 dollars a week at Christmas time. When she was hired she was told what her approximate earnings would be per week. Witness believed the hiring date was the 12th or 13th of November, 1952, and before she could get up her records she did not show up. She did not work as late as November 30th or December 31, 1952. Witness remembers her name was Mary, but other than that she does not recall the name that was given to her.

LENA A. WARNER, being first sworn, testified as follows:

That she lives in Chicago and she worked at the Spiegel's store 15 at 925 E. 63rd Street in the latter part of 1952. Witness identifies Mary K. Johnson in the court room as a person who worked at Spiegels in November of 1952. Witness testified that she worked a day and a half, and that she went to the washroom quite often.

CROSS EXAMINATION

Witness remembers it was in November, but the date she could not supply. Mary K. Johnson presented a neatly dressed, nice appearance.

SHELLY WARREN, being first sworn, testified for the Government as follows:

That she came to Minneapolis from Pontiac, Michigan, in June of 1955. She was accompanied by Godfrey Lee Bar-

rett and Lovie Barrett, step-brother and sister. She is 29 years of age and has been a prostitute since 1947.

"Q. And how long had you known Godfrey Barrett before you left Michigan and came here?

Mr. Hammond: I object to that as irrelevant and immaterial.

The Court: You may answer.

A. Probably less than a week."

During that week she practiced her trade as a prostitute. Godfrey Barrett was not working at that time and she was staying with him and providing funds for herself and he from her prostitution. After we left Michigan, we stopped at Toledo for a week, where I practiced prostitution to provide us with funds, and then we went to Galesburg, Illinois, where we remained two or three days where I practiced prostitution. Then we went to Rock Island, Illinois, where we remained three or four weeks where I was confined to a hospital. We then went to Davenport where I obtained a job at a house of prostitution for a few days, and from there we went to Iowa City and Cedar Rapids and then to Chicago. We remained in Chicago about eight days where I practiced prostitution on one occasion, and from there we went to Milwaukee where we remained about a week. We stayed with relatives of Godfrey Barrett. I practiced prostitution there and then we came to Minneapolis, arriving here about the 8th or 9th of June, 1955. I practiced prostitution in Minneapolis and was arrested and charged with that offense on August 2, 1955. Godfrey Barrett was arrested at the same time, and I received a sentence of 90 days in the workhouse. Godfrey Barrett was given 10 days for vagrancy. In all the time I knew Godfrey Lee Barrett, I had no other employment than prostitution. I saw Mr. A. Ray Segal at the Workhouse on August 16, 1955. I had not seen him or known him prior to that time. He said he was considering representing me to see if there was any possible

way he could secure my release without doing the full time. The next time I saw him was sometime in September, 1955, after Godfrey Lee Barrett had been arrested.

"Q. Did you have any conversation with Mr. Segal in regard to Godfrey Lee Barrett's having been arrested?

A. Yes.

Mr. Hammond: Objected to as irrelevant, immaterial, doesn't tend to prove any issues in this case.

The Court: You may answer.

The Witness: Yes, I was told that.

By Mr. James:

Q. When was this.

A. In September. I don't remember the date.

Q. And what was said in that conversation?

A. He said that Junior Lee was in jail and had been arrested on a charge of white slavery and that if I did as he told me to do there would never be any trial and that I didn't have anything to worry about.

Mr. Hammond: I ask that that be stricken, Your Honor, as prejudicial and highly prejudicial and wholly irrelevant and immaterial, has nothing to do with the charges against this man.

The Court: The motion is denied, but you may renew it later. We will see what happens.

Q. And what, if you remember, there was said in regard to what you should say?

A. Well, I was only told not to answer any questions that the FBI asked me.

Q. And was anything further said at that time?

A. No.

Mr. Hammond: I understand I have objection to all this line of testimony, Your Honor.

The Court: You may.

Mr. Hammond: Highly prejudicial.

The Court: You may have a standing objection."

Witness then stated that she was mixed up, and that the time she is referred to now is when he came after she had been subpoened . . . . the time she was speaking of just prior to this was the first time he came to see her when he was considering representing me to get me released when he told me not to answer any question by the FBI and then after Godfrey was arrested he came to see me and was telling me how I should answer any question in the event I had to go to trial as a witness against Godfrey. Between the first and second times she had been subpoened by the Government in connection with Godfrey Lee Barrett's case. The testimony continued as follows:

"Q. And what did Mr. Segal tell you in regard to testifying pursuant to that subpoena.

Mr. Hammond: I have the same objections Your Honor.

The Court: Same ruling. You may answer.

The Witness: He told me that I was never to admit to the Grand Jury that I had ever had intercourse with Godfrey Barrett, I had ever given him any money, I had ever traveled for the purposes of prostitution, that I had only traveled on a share-the expense plan and that all of us shared expenses. I had received money from my mother in ordinary mail, that I had worked at various places under aliases which I couldn t remember, because the places I worked I hadn't stayed long enough, only until I was asked for a Social Security card, that if I did that, I would never have to go to trial because I was the main witness for Barrett and that if I did that there wouldn't be any trial. And I asked him if he was going to go with me to Springfield, because I was subpoened to Springfield and he said it would never reach there, and he told me he defended a girl named Mary Johnson successfully in a similar case and she had listened to him

and the case had been beaten, and said that he told her to say that she worked at Spiegel's Mail Order House for two months, and that she testified in that manner and, whatever the case was, was never—they beat the case anyway."

Witness testified she saw Mr. Segal come to the Workhouse a third time and represented to the matron that he was my attorney, but I told the matron that he was not my attorney and that I did not want to see him. The testimony continued:

"Q. Had you had any conversation with Mr. Segal in regard to the trip itself.

A. You mean from Michigan to Minnesota?

Q. Yes.

Mr. Hammond: I object to this now as wholly irrelevant and immaterial, the second Godfrey Lee Barrett arrangement.

The Court: You may answer. You understand the question.

The Witness: Yes I do. Well, none other than that I was to say the trip was taken to seek employment and that I was sharing expenses and that's all there was to it.

By Mr. Janes:

Q. Had you had any—had you said anything to him about your employment or about how the expenses were paid?

A. Well, I had told him that I was frightened of Grand Jury action because I had been arrested for prostitution, that was an established fact, I pleaded guilty to prostitution."

CROSS EXAMINATION

Witness testified that she is 29 years of age, single, and is presently living at the Appledore Hotel in Minneapolis, Minn. with a girl friend. At the present time she is working on the streets of Minneapolis practicing prostitution, and

has been doing that since she was released from the Workhouse last October, and she has not been arrested or served any time since last October. She testified that she has been continually violating the law in the City of Minneapolis since last October and nothing has been done about it.

Witness testified that she was born in Dearborn, Mich., went to school in Pontiac, Mich. for nine grades; been married once and divorced; no children. Godfrey Lee Barrett is a colored man; she picked up with him in April of 1955. She was living with Godfrey in Minneapolis when she was arrested. She was interviewed by the FBI; they talked to her several times and she wouldn't answer any questions and they threatened her with Grand Jury action and she still wouldn't talk until she had been subpoened for the Grand Jury and then she finally told them the truth about the trip. Godfrey Lee Barrett was indicted before she ever admitted anything. The indictment was at Springfield, Illinois, for transportation to Michigan, and she was told he was also indicted for bringing her from Illinois to Minneapolis. At the time she was arrested in Minneapolis I was asked how I got to Minneapolis, and I told them that I hitchhiked from Duluth.

(The following proceedings took place in Chambers out of the hearing of the jury.)

"The Court: Well, the record should show all hands are here and what is the purpose of our congregation?

Mr. Hammond: The defendant at this time moves for a mistrial of this case by reason of the testimony of this witness Shelly Warren regarding the Godfrey Lee Barrett transaction. The defendant contends that the testimony was highly prejudicial to the defendant. It had no bearing whatsoever upon the charge in this indictment against the defendant. It is on a wholly irrelevant matter, and no plan or scheme is shown that would or could be shown to have continued for a period of two years thereafter. It could only

be introduced for the purpose of prejudicing this defendant on the charges that are made against him in this indictment, and therefore the testimony of this witness which was deliberately produced here in the Barrett matter and on the Barrett matter we feel is highly prejudicial to this defendant and it had no probative force for any other purpose than to be prejudicial. It doesn't tend to prove or disprove any of the charges in the indictment and was wholly outside any relevant proof on those charges; and therefore the defendant at this time moves for a mistrial.

Mr. Ryan: You are referring, Mr. Hammond, were you not, specifically to the claim that she, Shelly Warren, was advised to testify in a particular way or to make particular claims in reference to the Barrett case?

Mr. Hammond: That's right.

• • • • •

"The Court: Mr. Janes.

Mr. Janes: I might state, Your Honor, that I think there is no evidence that's been received in this trial other than that which is competent and material to the issues of the case. Probably there is no evidence that is more clearly recognized in evidence than an admission by a defendant as to the matters and the issues actually involved in the case and this defendant in his conversation with Shelly Warren, under the testimony, stated that he did a like type of thing in the Mary K. Johnson case and it worked. He was acquitted. And to give any meaning to that admission the circumstances surrounding the admission to be in evidence or that admission would have been meaningless, and the circumstances surrounding that admission with the immediately preceding conversation and the other parts of that conversation which had to do with the present situation that Shelly Warren was in, and had that not been in evidence, his admissions would not have been shown to be what

they were, and we add, in addition, of course, the matter of scheme and pattern and also similar offenses within a reasonable period of time are admissible on the question of intention. However, our primary purpose in this evidence was its essentiality to the cir umstances of the giving of the words which, with the circumstances together involved the admission.

(The parties discuss the law on the questions involved.)

"The Court: The motion is denied.

Mr. Ryan: Then we have a further motion that the material testified to by Shelly Warren concerning what she claims Mr. Segal advised her to do in connection with the Godfrey Barrett case be stricken and the jury instructed to disregard it.

Mr. Janes: Our position is the same. It is material in explaining—in explanation of the words used and should be submitted to the jury. In other words that that goes to the admissions which are clearly—that are evidence in the case.

(Legal argument by Mr. Ryan.)

"The Court: I will take that motion under advisement and will you each give me a short memorandum about the pertinent law."

RE-DIRECT EXAMINATION

The testimony continued as follows:

"By Mr. Janes:

Q. Miss Warren, you testified in regard to your having been in jail in regard to a contempt of court?

A. Yes.

Q. What did that matter—or what was the contempt charge against you.

Mr. Hammond: I object to that as wholly irrelevant and im naterial.

The Court: You may answer.

The Witness: Because I refused to answer questions before a Grand Jury in a white slavery case in East St. Louis, Illinois."

Prior to the conversation with Mr. Segal she had not known or heard of Mary K. Johnson or of Spiegels' store in Chicago.

LOVIE D. BARRETT, being first sworn, testified for the Government as follows:

That she lives at 349 Western Ave., St. Paul, Minn. and works at Nevens Laundry and has worked there since August 5, 1955. She came to the Twin Cities on June 7, 1955 from Milwaukee. Prior to that she resided in Saginaw, Michigan. She left Saginaw in company of Godfrey Barrett

—

"Mr. Hammond: It's understood, Your Honor, we have objections to all this Barrett transaction as being wholly irrelevant to our inquiry here and highly prejudicial. May that be understood so I don't have to be objecting?

The Court: Your objection is noted, Mr. Hammond."

Witness testified that she traveled with Godfrey Barrett and Shelly Warren and after she got here Godfrey and Shelly were arrested. The testimony continued:

"Q. And did you—do you know who, if anyone, was their attorney or the attorney for either one or both of them.

Mr. Hammond: Same objection, wholly irrelevant and immaterial Your Honor. I want to be sure I protect my rights in this regard.

The Court: That's all right. You may continue to object any time you care to, but the record may indicate that you object to this whole transaction. The objection is overruled. You may answer.

Witness testified that she got Mr. Segal for Shelly at first, and subsequently she got Mr. Segal to also represent Godfrey Lee Barrett. Godfrey suggested to her that she obtain Mr. Segal for Shelly. She was in the courtroom when Godfrey was sentenced, but Mr. Scott was his lawyer then . . . Mr. Segal dropped the case because I couldn't pay the rest of the money. He walked out.

MR. C. ENNARD ERICKSON, being first sworn, testified for the Government as follows:

That he is the United States Marshal for the District of Minnesota; that one Godfrey Lee Barrett was a prisoner under his control at one time, he having been apprehended on September 19, 1955.

"Mr. Hammond: I don't have any questions. I suppose this is, Your Honor, all of this testimony I have general objections to regardless of what witness is on, may I have that understanding?

The Court: Yes. Your objections are in the record.

Mr. Janes: * * * I have an exhibit which has been marked GOVERNMENT'S EXHIBIT 6, which I would like to offer in evidence at this time.

Mr. Hammond: I have the same objections to it, Your Honor, wholly irrelevant and immaterial, highly prejudicial to this defendant.

The Court: Government's Exhibit 6 may be received."

DOROTHY H. NELSON, being first sworn, testified for the Government as follows:

That she is married to Gerald Nelson who is a brother of Donald Nelson who was tried in this court in the fall of 1953. She has known Mary K. Johnson since 1954. She never saw her prior to that time. Witness identifies Mr. Segal in the

courtroom and knows him to be a lawyer. She first saw him in June of 1954. She worked at a rest home that Mr. Segal owns and has a manager operating.

Witness testified that she is presently residing in the Minneapolis Workhouse having been sentenced to that place on a charge of lewdness. She knows of Jimmy Baker's place and the first time she was in there was in November, 1954. She has been in the place off and on since. She saw Mary K. Johnson in Jimmy Baker's place quite often and has also seen Mr. Segal in Jimmy Baker's place several times. She testified that she was present at a conversation between herself, Mary K. Johnson and Mr. A. Ray Segal at Jimmy Baker's place . . . . sitting in a booth . . . she thought it was in April of 1955. The testimony continued.

"A. Well, there was a conversation about the trial and Mr. Segal just said that she was a sharp—sharp girl on the witness stand."

Q. And did he say anything else.

A. He mentioned something about giving her pointers as to how to testify.

Q. Did he say anything else?

A. And she surprised him when she got on the witness stand.

Q. Did he say anything else?

A. Well, Donald Nelson's name came into the conversation and he mentioned something about he was, he could thank Mary for being on the street."

Witness testified that she practiced prostitution for money.

CROSS EXAMINATION

Witness states she is in the Workhouse on a lewd and indecent charge, having received a sentence of 90 days. She testified that she does not use narcotics . . . she tried it once . . . . she guessed it was heroin. Mr. Segal stated that when Mary K. Johnson testified she surprised him.

RE-DIRECT EXAMINATION

He did not say in what way she surprised him.

ROBERT F. BANNARN, being first sworn, testified for the Government as follows:

That he is 26 years of age; high school education. He has known Mary K. Johnson, but how long he could not remember. He took a trip with her in 1952. He could not recall if he took more than one trip with her. He took a trip to Chicago with her on or about November 11, 1952. They took a car and transferred to a bus. Donald Nelson was driving the car at the time. Rebecca Aron was also on the trip.

Witness identifies name and address in Government's Exhibit 9. The address in Detroit is his mother's address where he has also lived. He couldn't say if on November 14, 1952 he took an apartment at 6226 University Ave., Chicago. He had lived out there several times. He guessed he gave his name and address on or about that date when he rented an apartment. At about that time he lived in an apartment in Chicago and the landlady had a grandchild named Chucky, and he played with that child. He did not know how long he lived at that apartment. While living there he lived there with Mary K. Johnson. He probably did apply for a marriage license to marry Mary K. Johnson, but he doesn't remember if he was arrested a short time thereafter. He never did marry Mary K. Johnson. While living at that apartment in Chicago, he didn't have no occupation. He didn't know what Mary K. Johnson's occupation was, although she had some earnings. He did not remember whether Mary K. Johnson was using narcotics while he lived with her in this apartment. He was using narcotics at that time. He didn't know whether sometimes she supplied him with narcotics, and sometimes he supplied her with narcotics, it may have been that way. He did not know whether Mary K. Johnson worked at Spiegels. He did not know whether Mary K.

Johnson's earnings were sufficient to provide him with narcotics at that time. He did not know what narcotics cost in Chicago at that time. While he was living in that apartment, the cost of narcotics varied depending upon who you were dealing with. The prices would vary from one dollar a pill to three dollars a pill. He did not know how many pills he would use a day . . . . about as many as he could get, and the cost would run as high as $30 or $40 a day or higher or lower. It might be anything he had. I was a drug addict and anything I had I would use for narcotics. He did not know whether it was that way with Mary.

On the trip to Chicago on November 11, 1952, he did not know where he got out of the car. They continued to Chicago by bus, but he did not know how long they rode on that bus, nor did he know how much the bus fare cost. He did not know whether it was daytime or dark. The testimony continues—

"Q. Had you been using narcotics at that time?

A. All the time. I was in a state of not ever knowing what I was doing.

Q. You are not in that state now?

A. No. I am in the same state you are in now."

Witness testified he is presently in the Leavenworth Penitentiary, having been there three or four years . . . long enough to wake him up; meaning to get over the influence of the narcotics. He received a three year sentence on white slavery and a five year sentence on narcotics.

Witness thought he continued to live with Mary K. Johnson in Chicago from the time they arrived there on the bus and for several months thereafter, and that they had lived there before that time. "It could have been that way. Be just like a fellow on a drunk. I don't know what happened. I don't know what happened in those two years. I couldn't tell you what happened."

"Mr. Janes: The Government offers in evidence a certified copy of an indictment in Criminal File No. 8417 United States against Robert Bannarn, being GOVERNMENT'S EXHIBIT 36 for the purpose of fixing times in issue in the case, Your Honor. It shows the date of filing to be September 4, 1953 and also for the purpose of showing the charges that were then pending against him thereafter.

Mr. Hammond: The only objections we have to it, Your Honor, that it's irrelevant and immaterial to our problem here as to what charges were made against Bannarn.

The Court: GOVERNMENT'S EXHIBIT 36 may be received."

REBECCA ARON, being first sworn testified for the Government as follows:

Witness testified that she is married, and resides at 525 James Ave. North, where she has resided for about 5 years. She has known Donald Nelson since 1952 and knows his occupation to be a cab driver. She knows Mary K. Johnson, but didn't know her very long before 1952. She met her on the Avenue out north Minneapolis, around Jim's Cafe Society, the Key Club and different places like that. Jim's Cafe Society is Jimmy Baker's place. She also knows Mr. A. Ray Segal; he had been her attorney. She had seen Mr. Segal out at Jimmy Baker's place once or twice.

On November 11, 1952 she was present when Mary K. Johnson and Bobby Bannarn had a conversation with Donald Nelson in regard to driving them to Chicago . . . she was not "sitting with them when the conversation was taking place because I presume after they had talked, then Nelson came to me and was telling me about it . . . what they were talking about" . . . Don asked her if he should drive them down, and I told Don, I said "Well I don't know, it's up to you. I mean, after all, we could use the money. I mean as long as he was going to pay you, so I didn't see any harm

in it.'" Don and I were keeping company at that time. Some years past she practiced prostitution. Donald Nelson and I lived in the same building at that time. The four of us then left in the same car for Chicago. We stopped at our house, 1314 Olson, and picked up some jackets because it was cold at the time. The testimony continues:

"Q. Did you, as a prostitute, turn any tricks that night after you left.

A. I can't remember turning any tricks that night."

Witness believed that the four went into her apartment. She cannot remember as to whether there were two other fellows there. After we left the apartment we started out on the trip. We stopped at a service station in St. Paul, and also stopped at Mary K's house. At the filling station she heard part of the conversation "I didn't hear all of the conversation, but I had, I came to the conclusion that Bobby wasn't going to pay for the gas and everything and Don and I, we didn't have any money so I was going to let the attendant hold some of my jewelry until we could get back and get some money and come back and pay for it, but evidently he must have paid for it." We then started out toward Chicago. I think it was dark because it was early morning. We did not drive all the way to Chicago. She did not know where they stopped . . . the name of the place. They drove quite awhile because when he did finally stop and let them out it was daylight.

"Q. And what state were you in when you let them out?

A. I don't know, really I don't know.

Q. Did you, at one time say it was Atkinson, or Fort Atkinson?

A. I said I thought I saw a sign that said something about Fort Atkinson or something like that, but I wasn't sure."

From this place where Don and she let them out, they then returned to Minneapolis. Later she knows that Don was involved in a criminal trial involving that trip. Mr. Segal

and Mr. Wasserman were Donald Nelson's attorneys. Mr. Wasserman at the time had his offices in the same building that Mr. Segal had his office. She was subpoened for that trial and for the trial of Robert Bannarn which were to be tried together. During the week preceding that trial, I saw Mary K. Johnson in Minneapolis after she returned from Chicago. The first time she saw her was on the "Avenue" and then she came to my house a few times.

When we left Minneapolis on this trip it was dark and when we left off Mary K. and Bannarn it was daylight. She had no idea how long they had been driving . . . it was quite some time . . . hours she supposed.

"Q. And when you say you saw a sign where they got out or at the place where they got out of 'Fort Atkinson' was it the type of sign that seemed to indicate the name of the place?

A. It was just a sign that said Fort Atkinson, but I am not too familiar with Minneapolis or any other places, states here, so I didn't now whether I was in Minneapolis or where I was.

Q. But that sign Fort Atkinson was after you traveled several hours from St. Paul while you were on your trip to Chicago wasn't it?

A. Yes."

She saw Mr. A. Ray Segal during the week before the trial in his office. "Like I say, at the time he was also my attorney and I would go down and talk to him. I had never been to any trials or any Grand Juries or anything like that so I felt I needed some legal advice." I saw him in his office. He was also the attorney for Donald Nelson. She can remember on one occasion Mary K. Johnson was present in Mr. Segal's office.

"Q. Had you testified yet at the trial?

A. This one time, the time that I can remember being in his office with Mary K., I don't know if I had testified or not. I can't remember.

Q. And what was said in that conversation when the three of you were there in Mr. A. Ray Segal's office?

A. Well, we were—I mean I wanted to know what to do in that and he was giving me advice about what I should do.

Q. What advice did he give you?

A. Well, he told me to tell the truth and things that I was not sure of not to mention them, don't say anything I wasn't positive of.

Q. What else was said at that conversation?

A. Well I think I asked him what if they should ask me if I had ever been a prostitute or something like that. I was more or less concerned about myself.

Q. Had you been a prostitute?

A. I had been, yes.

Q. And did Mr. Segal know that?

A. I don't know if he knew it or not.

Q. What was said when he asked you about that question, whether you had been a prostitute.

A. He told me to say—not to say I had been one if I was not.

Q. Was anything said about whether you had been to Wisconsin or not in that conversation?

* * * * *

"A. Well, nothing other than just, I think I mentioned to him something about me seeing the sign that said Fort Atkinson, and he asked me was I sure, and I told him no, I wasn't too positive, but I thought I saw a sign, and he said 'If you are not sure, just forget about that.'

Q. Was anything said in that conversation in regard to Mary K. testifying at that trial.

A. Well, she wasn't supposed to have been making a trip for the purpose of prostitution. She was going to get a job.

* * * * * *

"Q. You say she wasn't supposed to say anything about prostitution, did you say?

A. That she wasn't supposed to be going down—that Don was taking her to Chicago for the purpose of prostitution,

that she was going—he was driving her down there to get a job.

Q. Who said that?

A. Mr. Segal, because that is what she had actually told Don she was going down there, to work.

Q. Was anything said about the kind of job she was going to Chicago to get?

A. I can't remember. All I know, just she was going down there to get a job and work because they had gotten a floater from here or something."

She thought she and Bobby both had gotten a floater to leave Minneapolis and that she was going down to get a job. She did not remember at any specific place. "To be frank with you the only time I heard anything about Spiegel's was after the trial started. I am not sure, but I think Mr. Segal told her not to say anything about her being a drug addict."

"Q. Tell what was said there by Mr. Segal and by Mary K. or by yourself as the case may be about Bobby and Mary K. living together in Chicago.

A. She wasn't supposed to say she was living with Bobby Bannarn.

Q. Mary K. was not supposed to?

A. Yes.

Q. When she testified in the Nelson trial?

A. Yes."

I don't recall Mary K. telling Mr. Segal anything about the trip. She was present at a meeting in Mr. Nemerov's office in which Mary K. Johnson, Mr. Nemerov and Mr. Segal were present. It was after she and Mary K. had testified. Mr. Wasserman was not there. It seemed to her that Mr. Segal was criticising her testimony most of the time . . . I think he was mostly angry with me because I mentioned that Fort Atkinson deal. He was praising Mary K. and Mr. Segal, Mary K. and she had some food that evening at a restaurant on Hennepin Avenue. She could not remem-

ber much of what was said at the conversation other than they were criticising her because of her testimony. Donald Nelson had not testified at the trial as yet.

She received a subpoena last winter to appear as a witness in the case of U. S. vs. A. Ray Segal and also a subpoena to testify in this case last summer. After receiving the first subpoena she had a conversation with Mr. Segal . . . he wanted me to come down to his office and talk to him. I told him that I would come down the next day and talk with him. I didn't go down the next day because I was arrested after that. The next conversation was on the telephone a couple of days later. I called him on the phone . . .

"A. Well, I can't remember it all, but I called him because I wanted to know why was he trying to involve Mr. Doering into this. I was, I called up. I wanted to talk to him and try to find out why he was trying to involve, well, as a matter of fact, that's what I said, why do you want to try to involve Mr. Doering into all this?"

Q. What did he say?

A. Well, he was angry because Mr. Doering wouldn't let me come down that day and talk with him."

Mr. Doering was a friend of mine . . . Mr. Herb Doering who lives in New Ulm, Minn. I have known him about two years . . . he was a special friend at the time. Mr. Segal said he (Mr. Doering) "had no business interfering with my coming down to talk to him." Mr. Segal wanted to know who he was and why could he keep me from coming down and doing what I wanted to do. I told Mr. Segal that Mr. Doering was a very good friend of mine and I wanted to listen to him, and take his advice.

"Mr. Hammond: Well, I can't see the materiality of this and ask that it be stricken, Your Honor, as wholly irrelevant and immaterial. I can't understand what materiality it has.

The Court: Well, the objection is overruled. I will wait and see what happens."

That conversation was about three months ago; it was before his trial. I did not see Mr. Segal until this trial started. I talked to Mr. Segal once on the phone since the last phone conversation. I called Mr. Segal. It was the 17th of September, 1956.

"A. Well, I called up and told him that I would like to talk with him. I wanted to see him.

Q. And had anything occurred between that, your calling him and the previous conversation that made you think you wanted to talk to him.

A. Yes it had.

Q. And what had occurred.

A. Well, I don't know if it was a practical joker or what, but it was worrying me, and I wanted to find out for myself because I was getting, I had gotten two or three calls, and, concerning my leaving town, receiving some money to leave town or something.

The Court: Mr. Reporter, will you read that answer back, I didn't hear it.

The Court: You may go ahead.

Mr. Hammond: Just a minute. May we have an objection to this as calling for a conclusion unless there is some connection here with Mr. Segal, that this is very prejudicial to Mr. Segal unless there is some showing that he was in some way responsible for that.

Mr. Janes: I can state, Your Honor, that we expect—

Mr. Hammond: If the Government can prove Mr. Segal has any connection with that, okay; but put in that type of testimony and just leave it there without any showing of any connection we contend is very prejudicial to him and we want the record to show that we object to it:

Mr. Janes: There will be further showing in that regard.

The Court: Objection overruled. You may proceed."

She testified that is why she called him because she didn't want to talk to him on the phone, she wanted a better explanation.

"A. I think I said to him, I said 'I think it is about time I talked to you because it seems as though I am either going to end up dead or in jail."

She testified that Mr. Segal asked her to come to the office, but she could not come, so Mr. Segal said he would be there the next day at 2:00 p.m. That same night she was arrested for being lewd and indecent, and received a 30-day sentence.

Mr. Doering has been buying things for her and giving her money and things.

"Mr. Hammond: I object to that as wholly irrelevant and immaterial. What has that got to do with Mr. Segal?

The Court: The answer may stand.

Mr. Janes: No further questions.

Mr. Hammond: Do you intend to connect this up any further than you have now?

Mr. Janes: I certainly do.

Mr. Hammond: We will certainly expect that you do because we certainly contend this is very highly prejudicial type of testimony and we expect the Government to go through with it and show Mr. Segal had some connection with this and we can't just leave this standing up in the air like this.

Mr. Janes: There will be—The Government expects further testimony on this subject matter that has just been testified to."

CROSS EXAMINATION

In November, 1952, she was living in the same building with Donald Nelson, a cab driver and she was keeping company with him. At that time she was working for the Zelle Mfg. Co., which is a glove factory; she had worked there about 3 years at that time; five days a week, eight hours a day; average earnings at $35 or $40.00 a week.

On the trip to Chicago on November 10, 1952, it is true that she didn't know exactly where they were in Wisconsin. She did not remember whether or not Mr. Nelson told her the name of the town was Tomah, Wisconsin, and she did not know that Donald Nelson testified at his trial that the name of the town was Tomah, Wisconsin. She did know that it was Mr. Nelson's contention that he was out of the State of Minnesota. She was not quite sure just where she was, and that is true now. She did not remember going through the City of Madison, Wis., nor did she know what highway she was on. She does not drive an automobile. Donald Nelson was driving the car and she was seated beside him. It was in the night time when they started out. Bannarn and Mary K. Johnson were supposed to pay Donald Nelson $50.00 for making the trip to Chicago, and the difficulty at the filling station was that Robert Bannarn was supposed to pay all the expenses and $50.00 and when we got there and gassed up and everything and it came time to pay the bill, I don't know what brought it up, the argument up or something, but anyway Bobby refused to pay and an argument started between Nelson and Bannarn about Bannarn renigging on his promise. She learned that the service station fellow called the police and about that time. Bannarn paid the bill and we moved on. She did not know where in St. Paul this occurred. After that she remembered going over a bridge, but other than that she could not say where she was in St. Paul. Mary K. Johnson was not furnishing Don Nelson marijuana cigarettes on the trip. She did not sleep at all on the trip. She did not have too much

to say to Mary or Bobby on the trip. She had known Bannarn before the trip. He had been doing nothing as far as she could see. She didn't know Mary K. personally, but had seen her around, but never associated with her. From seeing her around she gathered she wasn't working, so evidently she must have been what you might call soliciting or hustling.

A quarrel occurred in Wisconsin some place, and Mr. Nelson stopped the car and refused to go ahead until he got paid . . . .

"Q. Do you know where that occurred?

A. No. I don't know if it was in Wisconsin or Minneapolis, but I know it was way out some little small town."

Nelson told them to either pay or get out, and finally Bobby said "'Well, now, don't leave us here in this nothing place, at least take us some place where there is a bus station or train station or something so we can continue on.'" So that's where Nelson decided to drive them on to some town where they could get a bus or something. Bannarn was supposed to give him a little bit more money for taking him. Nelson then drove on to a little larger town . . . she does not know the name of the town, and Bobby jumped out of the car and he and Mary got right onto the bus, and Don, he ran to the bus, but it was too late, and Donald was paid nothing. The only thing Don got out of it was a hat that Bobby left in the car. They didn't pay Don anything. We then drove back to Minneapolis. She did not hear from Mary K. or from Bannarn while they were away and she never heard from them again.

RE-DIRECT EXAMINATION

Mr. Doering had given her funds and things as a friend of hers.

MR. HERBERT E. DOERING, being first sworn, testified for the Government as follows:

That he lives at New Ulm, Minnesota, married and a family of one, a son, who attends the University of Minnesota. He is in the insurance business and has been in that business 30 years, connected with the American Insurance Company of Newark, N. J. He is 55 years of age. He knows a girl named Rebecca Aron; he met her about two years ago through a mutual acquaintance, and the occasion of meeting her was that I was on my way to St. Paul with a friend and we stopped off at "South of the Border" because he wanted a drink, and I was introduced to her in there at that time. He was on business at that time. He next saw her about three weeks later. He was on business on that occasion, also. It was at "South of the Border" . . . that is a saloon on Washington Avenue in Minneapolis. He then saw her about three or four weeks after that, and then he has seen her off and on up until March of this year. I saw her as a friend of mine, and would see her downtown or at her house. I would meet her by arrangement often times and sometime without arrangement. In February and March of this year I was seeing her about once a week. I bought her various items, and I provided her with the use of an automobile at times, and he acquired an automobile that she used most of the time for some period of time. She referred to it as her car. Sometimes he provided her with money, ranging from ten to fifty dollars; this occurred every other week. I also loaned her money.

When she received a subpoena to appear before the Grand Jury, I drove her over to St. Paul to answer to it, and he knows that she was subsequently subpoened to appear at the trial of this case this spring. He had a conversation with Mr. A. Ray Segal about that subpoena. It was the 17th day of March, 1956, and it was by telephone. I called Mr. Segal from my friend's house, Mr. Robert Whitchurch. Mr. Segal identified himself.

"A. I asked Mr. Segal why he would adopt the attitude he had in doing what he had done and just why wouldn't he either come and see me or else drop down to the place where he presumed and, or he told me he knew I was there, and we could have sat down and talked over this entire matter. Mr. Segal told me point blank that he was fighting for his life, and he didn't like to have me butt in on him and that his information was that I was giving advice to Mrs. Aron and that he had her all set up to come to his office and he also asked me whether or not she had discussed with me a certain conversation that some girls had in an attorney's office and just why I was butting into that, and he was going to get me.

* * * * *

"A. Well, I told Mr. Segal that I didn't like it and that any information that he desired he could have gotten in a human way without doing what he had done, and I would have been glad to use what little influence I had with Rebecca Aron, and I told him that as far as that was concerned she and I had been dissolved our relationship some time previously, that I had merely dropped in on some business matters which were strictly personal and that his own detective who was there, I told him that Rebecca would answer any questions that he cared to ask her, but that she didn't want to go up to his office at 6:00 o'clock in the evening because I refused to go along and she said she wouldn't go alone.

* * * * *

"A. Well, he told me that I was butting in on him and he was going to get me.

Q. And was anything said about, said in that conversation in regard to Rebecca Aron's being here to testify?

A. Oh, yes. It was mentioned because he knew that I knew she would testify and he told me point blank that he wanted her up to the office because he wanted her out of

town, and I told him that that was something that didn't concern me. I had no interest whatsoever in the matter. She could do as she wanted to, and I told Mr. Segal point blank in the telephone that I wasn't advising her in any way, shape or form more than any other human being would another.

* * * * * *

"A. I returned to Rebecca's house from the Whitchurch house and her telephone was out of order so we went next door to a neighbor and Rebecca called him, and I told him that Rebecca wanted to talk to him but that she would not come up to his office and there was nothing I could do about it at all, and she did talk to him, and he slammed the receiver on her.

Q. And then was Rebecca Aron arrested the next day so far as you know?

A. No, she was not arrested the next day.

Q. Did you have any further conversation with Mr. A. Ray Segal?

A. Never.

Mr. Janes: No further questions.

(Following proceedings had at the Bench.)

"Mr. Hammond: I assume that the Government has produced its alleged testimony here that is going to connect Mr. Segal with this testimony, that someone was trying to get Becky Aron out of town. Is that right. Is that your testimony?

Mr. Janes: That is the subject matter of the testimony. We have not concluded with all the testimony on this subject, however.

Mr. Hammond: As far as this testimony is concerned I move that it be stricken. It is highly prejudicial. It does not tend to prove any of the issues in this case and is strictly put in for the purpose of prejudicing this defendant. There is no probative value in it whatsoever and I cannot see how

it can do anything else but prejudice this defendant. It does not prove any fact in this case. Rebecca earlier testified here and she has told her story. How can this do anything else but inflame the minds of the jury; That is all it is intended for and I am pretty sure that is what it will do. I certainly move for a mistrial at this time. I move to strike this evidence from the record in the event the motion is denied.

Mr. Janes: We submit an attempt, successfully or failing, to impede a witness in a criminal trial is evidence of guilt just as is flight, and we submit the cases so hold.

Mr. Ryan: You haven't shown any such thing.

The Court: If you will give me your memorandum by morning I will be happy to have them. In the meantime I will overrule your objection and deny your motion."

(The following proceedings had in chambers.)

"Mr. Hammond: Before we get started I have something on my mind I would like to get off. The Government has put this witness on the stand, Mr. Herbert Doering, I believe his name is, who is now on the stand, and it is very apparent to me with my little experience this witness may not be of sound mind. I have to protect my client, I appreciate that, but it doesn't seem reasonable to me, a substantial businessman of many years standing suddenly falls into living and cohabiting with a colored prostitute. My little investigation last night determined that this man may not be competent to testify as a witness and I don't relish the opportunity of cross-examining him and dragging out before this jury all of these lewd details of his association with Becky Aron, a colored prostitute. I call the Court's attention to this because I really feel this man is an incompetent witness and I don't think the Government should be proud of putting him on the witness stand, but I feel I am in a position where I have to cross examine.

Mr. Janes: I have seen no evidence whatever of his incompetency.

The Court: Let the record show that we are all in Chambers at the request of counsel. All the counsel are here. Does somebody want to make a motion? What is the purpose of our gathering, gentlemen?

* * * * *

"The Court: All right, gentlemen. Shall we proceed."

CROSS EXAMINATION

Witness states that he is 55 years of age, has lived in New Ulm approximately thirty years, and he has been special agent for the American Insurance Company of Newark New Jersey, a fire and casualty company, servicing agents in a particular territory, southwestern Minnesota which does not include the Twin Cities. Witness claims he has been in good health.

Witness states he met Rebecca Aron in the South of the Border saloon on Washington Avenue in Minneapolis in 1954. It is a place that is frequented by colored people and white people. We dropped in there for a drink and I became acquainted with Becky Aron. Becky Aron is very definitely a colored girl, and I am not colored. Becky Aron was frequenting the place at the time, and from that time he interruptedly began associating with her, and seeing more and more of her as the time went on. I am a married man and have one son that is attending the University of Minnesota, and my wife lives at New Ulm, Minnesota. When I first met Becky Aron I did not know she was a prostitute but he later became aware of it. From time to time he gave her money, presents and gifts, ranging from ten dollars to fifty dollars in money. I loaned her money for a down payment on an automobile and guaranteed the account. The automobile was in her name and she was to make the payments therefor. She had the automobile approximately three months when the finance company repossessed it. In that case I gave her $250.00. He was seeing her at her apartment frequently.

The telephone conversation I had with Mr. Segal was in the Spring of 1956. He had left Becky Aron previously and had returned that day to deliver some papers that he had in his possession in connection with some interest that she had in some lots down in Texas, and she sent word to me that she would like to have my file on that and explain what had been done. That was the occasion of my visit to her on that day. The conversation with Mr. Segal was not that day but the next day while he was there, a man came purporting to be a detective and was talking to her. I went into another room and "Becky came back to the house, they were on the porch, and I went into the house, Becky came in, called me into the kitchen and said she wanted to talk to me." He had broken off the companionship about two weeks prior to that time. During this time they had taken automobile trips together to Hutchinson, Minnesota, and to Rochester, Minnesota.

REDIRECT EXAMINATION

The man who was at Becky Aron's house that Friday night described himself as a detective representing Mr. Segal.

DANIEL J. LEAHY, being first sworn, testified for the Government as follows:

That he lives in Minneapolis and is the Assistant to the Manager of the Minneapolis Division of the Northwestern Bell Telephone Company, and as such is a custodian of the records of long distance phone calls. Witness produces GOVERNMENT'S EXHIBITS 37 and 38 which are records of the company of telephone calls made on March 16, 1956. GOVERNMENT'S EXHIBIT 37 and 38 RECEIVED WITHOUT OBJECTION.

Witness explains Government's Exhibit 37 as a phone call originating from Federal 3-2055, which is the office phone of Mr. A. Ray Segal in Minneapolis, Minn. The record shows the call was completed to telephone No. 21, Amer-

ican Insurance Company in New Ulm. The conversation lasted seven minutes. It was a station to station call. The receiving party was the American Insurance Company.

Witness explains Government's Exhibit 38 as a call on March 17, 1956, 11:58 a.m. from Federal 3-2055, A. Ray Segal's office, at 850 Midland Bank Bldg. to Telephone 21, New Ulm, Minnesota, American Insurance Company. Station to Station call.

EVELYN A. DOERING, being first sworn testified for the Government as follows:

That she resides at New Ulm. She went to High School in New Ulm.

"Mr. Hammond: Maybe she had better take a little recess.

The Court: Bailiff, will you get some water. Would you like to take a little recess or would you rather go ahead?

The Witness: No, let's get it over with."

That she is the wife of Herbert Doering who is employed by the American Insurance Company of Newark, N. J., Mr. Doering has his office in his home and the phone is listed in our name and in the name of the American Insurance Company. She has a high school education and attended business college. She taught school and also worked in a law office of Somsen Dempsey and Flor at New Ulm. Mr. Doering's business took him away from his home. Mr. Robert Whitchurch of Minneapolis was his immediate superior.

Prior to March 16, 1956 she had not known of Mr. A. Ray Segal, nor of Rebecca Aron.

"Mr. Hammond: Now, Your Honor, I know this is a very difficult situation, but I want to make the objection here that this matter is wholly irrelevant and immaterial to any inquiry that we are here concerned with, very prejudicial, and

I want the record to show those facts. It's very embarassing and I think the record should show it.

The Court: The objection is overruled."

Something occurred on March 16th that caused her to hear of those names. When it happened she was at home getting ready for company; that's her home which is also the office of the American Insurance Company. "The telephone rang and a voice said 'This is A. R. Segal, an attorney at law,' and there was an address, I think it was 824 Midland Bank. It was a terrific shock as I look back now and as I was accustomed to taking notes when I am at the telephone, I was jotting this thing down." Witness produces her notes, and states that she typed them up the next day, and that some of her personal reactions are included therein.

(Discussion at the Bench between Court and Counsel out of the hearing of the jury.)

"Mr. Hammond: The defendant at this time vigorously objects to any testimony regarding any conversations with this particular woman on the grounds that they are highly prejudicial and to introduce, no doubt, for any other purpose than that they are prejudicial. It's got nothing to do with the issues in this particular case and all it shows is that generally that Mr. Segal was the one that advised this poor woman that her husband was keeping company with a negress. Now, how that can be material in this case, I don't know, anything else, but very, very prejudicial.

The Court: I gather that what you want to do is elicit from her the telephone conversation.

Mr. Janes: That's right.

The Court: You don't want to offer this, this paper?

Mr. Janes: No, Your Honor.

The Court: Objection overruled.

Mr. Ryan: We are objecting to the conversation too as indicated by what the contents of the document are.

The Court: I think you better voice your objections as we go along so the record will show what you are objecting to.

Mr. Ryan: We are now advised by the production of the document as to what the nature of the conversation purports to be, and I think this is a timely moment to interpose an objection to any further testimony concerning these telephone conversations and we interpose it.

The Court: Your objections are overruled."

(The following proceedings were in open court.)

The Witness:

". . . He asked whether this is the American Insurance Company and gave his name A. R. Segal, Attorney at 854 Midland Bank Building, Minneapolis. He asked for a description of my husband and when I asked him why he wanted this description he said he was checking on some car registrations and he found one car registered in Herb's name and he gave the type car and the license number and another car, a Chevrolet, he gave the name of the car and that he said was registered in Herb's name and the company's name. He didn't explain why he wanted that information. It was just this attorney calling. Then he said that my husband was at the home of a young negress. He gave an address and he said she was 25 years old, a prostitute of the lowest order and Herb was there at 4:15. Then I asked him why he was calling and he said that Herb was interfering in some private affairs of his and he wanted Herb out of the picture. Because he hadn't given a very good description of Herb he therefore said he would not tell me about his private investigations. . . . That is all I can remember.

Q. And then what did you do after that conversation in regard to that conversation?

Mr. Hammond: I object to this as wholly irrelevant and immaterial and very prejudicial, Your Honor.

The Court: You may answer.

A. Well, when you don't know what to do you don't do anything. You walk the floor and . . ."

The next day, March 17, 1956, at or about noon she received a second call. The man identified himself, the voice, as this same A. R. Segal. When he called he said he had called Bob's office and he said he had called them to—told them the story about Bob. He was referring to Bob Whitchurch.

"Mr. Hammond: I have an objection to all this line of testimony Your Honor, on the same grounds, so I won't have to keep objecting.

The Court: You may counsel, and the objection is overruled. You may proceed."

"A. He said he had called Bob's office and he had told them the story about Herb as he had outlined it to me; that he was going to call Mr. Whitchurch as he was under the impression that Herb worked under him and he was going to tell or call what would be the American Rockford's office when he got around to it, but he didn't seem to know where to phone, and he wasn't terribly clear about calling Bob's office. This was Saturday afternoon or something, and I don't see how he could have called him then, but he must have called him in the morning. . . . Well, it seems to me, I thing he said 'I don't see why the company would employ a man like Herb.' Then he went on to give me the description of a Buick and the Chevrolet, and said that Herb had spent the night with Becky Aron. I think he repeated a description of Becky Aron and then he said when they had stopped following Becky and Herb they were getting gas in a gas station and Herb was teaching her how to drive. At this time he had a very good description of Herb. . . . Then I

asked why the investigation and again his interest. He said they wanted Becky Aron as a witness for some morals charge and they wanted Herb out of the way and he said if Herb would quit giving her money and supporting her they would be able to get Becky Aron to leave town." Then he said if there was some way I could come to Minneapolis he would take me over and show me Becky and Herb. Of course that kind of left you speechless. I told him it was a terrific shock and I didn't know what to do. That was the end of the conversation. I then called Mr. Whitchurch and I also phoned Mr. Gislason, an attorney in New Ulm, and asked him to call Mr. Segal."

CROSS EXAMINATION

Witness states that she observed no illness of Mr. Doering.

MR. ROBERT H. WHITCHURCH, being first sworn, testified for the Government as follows:

That he lives in Minneapolis and is State Agent for the American Insurance Company of Newark, N. J. Mr. Herbert Doering works under him and has his office at New Ulm. On March 17, 1956, he received a telephone call from Mrs. Doering, and he in turn called Mr. A. Ray Segal at his office. Mr. Segal identified himself on the phone, and I identified myself and told him that Mrs. Doering from New Ulm had just called and was quite excited about her husband . . . "she said that you had just made a phone call to her and it seems as though Herb is in trouble. Mr. Segal then said 'Yes he is. And what kind of a company is the American Insurance Company to have a man like that working for them . . . for two years he has been supporting a colored prostitute by the name of Becky Aron. In fact he is with her today . . . he has bought her a blue Buick automobile,' license number is so and so, 'and furthermore the two of them were picked up in the Frederick Hotel,' and I believe he said, . . . 'in January of this year . . . on some sort of a morals charge.' He said, 'If you want to verify

this it is in the police records.' Then I said, 'Well Mr. Segal, why are you interested . . . or what has this got to do with you,' and he said 'Well, Mr. Doering is posing as a doctor and that he is advising Becky on matters that he doesn't know anything about.' And I said 'Well, did you say Herb is up there now,' and he said . . . 'He and Becky have just left the house,' and I don't know whether it was to either drive . . . either giving her a driving lesson, or to take some laundry to the laundromat,' but he said 'You better get up there right now and get him out of there.' And about that time I agreed with him. So my wife and I got in the car and went up there, found Herb and Becky on the front porch and I drove his car back to my house and my wife drove her car, or my car back to our house."

When we got back to the house I gave Mr. Doering Mr. Segal's telephone number so he could call him. He overheard parts of the conversation . . . "I could hear a voice, but that is all. I couldn't understand anything on the phone call." Witness testified that he did hear what Mr. Doering said . . . he heard Herb say to Mr. Segal "'I know Becky was in the room at the time of the conference or discussion, but she didn't hear anything because her back was turned so there isn't anything you have to be afraid of.'

"And then . . . oh I heard . . . there was more conversation and all that and then Herb said 'Why should I get her out of town?' And then there was more conversation and Herb said 'There isn't any more harm you could do me than you have already done.'"

SIDNEY P. GISLASON, being first sworn, testified for the Government as follows:

That he resides at New Ulm and is an attorney at law, and former District Judge of the Ninth Judicial District. He received a phone call from Mrs. Herbert Doering on the 17th of March, 1956 and as a result of that call he placed a call

to Mr. A. Ray Segal at his office in Minneapolis. I told him about Mrs. Doering and that she had called me and I asked him what he was doing or what he was trying to do, and he explained to me as near as I can recall that Mr. Doering had been associated with a girl, named Becky Aron, that Becky Aron was to be a witness in some case in which Mr. Segal was involved, and that Mr. Doering was interferring with that witness and that he, Mr. Segal was fighting for his life. The balance of the conversation as he recalled it, was simply my telling him or suggesting him that he not bother Mrs. Doering any further.

REBECCA ARON, recalled for further cross-examination. By Mr. Hammond:

Witness does not remember the exact date, but she does remember testifying for the Government in the first trial of Mr. A. Ray Segal, and her testimony was about the same things she has here testified to. She has appeared here and testified for the Government and she did not get out of town. She has lived here in Minneapolis all the time at 525 James Avenue North and she is still there. At no time did she ever get out of town.

"Q. Did Mr. Segal ever request you to get out of town?
A. No, he hasn't."

REDIRECT EXAMINATION

Mr. Segal has acted as her attorney in the past several times.

THE GOVERNMENT RESTS

(The following proceedings were at the Bench out of the hearing of the jury)

"Mr. Hammond: At this time the defendant moves to strike all this testimony with respect to Mr. Doering and Mrs. Doering and Mr. Whitchurch and anything relating to that Doering transaction on the grounds that it has not been

shown here by any proof, any competent proof that Segal has anything to do with any telephone call that she received, Becky Aron received, that she was supposed to get out of town. Now, the only thing that they have here is claimed statements made that, by Mrs. Doering and Mr. Doering, that Mr. Segal said in March of 1956 that he wanted Becky out of town. Now that's six, seven months ago, and that's the only thing there is in this record. There is no connection whatsoever between the claimed statements by this witness Becky Aron that she made just before she went to the workhouse is when she made the statement that someone was calling her on the phone telling her she better get out of town. Now, there is no connection of any of this testimony and Mr. Segal, and I move that it all be stricken and the jury be instructed to disregard it.

* * * * *

"Mr. Hammond: It's highly prejudicial testimony. It's the worst prejudice that I can see to bring this poor woman in here and say that Mr. Segal called her down there and told her that her husband was associating with a colored girl. They will convict him on that charge alone and for nothing else, and it's very prejudicial. It's not material to any inquiry we have here to be tried before this jury suborning perjury back in 1953.

Mr. Janes: May it please the Court, on March 21, 1956, as the records and files of this case show the trial of these same issues commenced in this Court presided over by Judge Nordbye. That was just four days after these telephone calls. The issues were the same issues as they are now before this Court and we submit that it is clear that an attempt to impede a Government witness in the case is admissible as evidence of the defendant's guilt, that is evidence of the defendant's understanding of the situation, and he impedes the witness at his peril because it tends to show he expects the issues would go against him if the true facts were presented to the jury.

Mr. Ryan: Where is there any evidence of any impeding of a Government witness? The most that can be said is that there is evidence to indicate that he attempted to impede another party, not the Government witness, but Mr. Doering.

Mr. Janes: We submit that it is very clear by the defendant's admissions on the telephone in these various calls that his purpose in calling Mrs. Doering was in order to get Herb Doering out of the way so he could get Becky Aron to leave town, and those are his admissions throughout these telephone calls.

The Court: The motion is denied. Any further motions?

• • • • •

"Mr. Hammond: We have a motion to make then if the Government rests. Now, if the Government has rested, the defendant at this time moves for a directed verdict of acquittal on the grounds that the Government has wholly failed to prove the charges in this indictment. We also move that if that motion is denied that we again move for mistrial on the grounds of the errors committed by the Court in admitting testimony on the Lee Barrett matter and also admitting testimony here on this Doering matter.

The Court: Motion for verdict of acquittal is denied. Motion for dismissal is denied."

DEFENDANT'S CASE

"Mr. Hammond: May the record show that the defendant waives his opening statement."

By Mr. Hammond:

IRVING NEMEROV, being first sworn testified for the defendant as follows:

That he resides in Minneapolis, is a lawyer and has practiced his profession for the last seven years. He is a graduate of the University of Minnesota, and has his office in the Northwestern Federal Bldg. at 8th and Hennepin in Minne-

apolis. He is associated in the practice of law with one Norman Perl. Back in 1953, his brother, not a lawyer, but a contractor, also had an office in our suite. He is a member of the American Bar Association, Hennepin County Bar Association and Minnesota Bar Association.

He was the lawyer for Mr. Robert Bannarn. He was retained by the grandmother, Mrs. Lila Bannarn, who lives in Golden Valley; it was my first contact with her. After being retained he took steps to represent Mr. Bannarn; he interviewed Mr. Bannarn in the Hennepin County Jail, and he gave me a copy of the indictment. This was the first part of October, 1953. The case was in the United States District Court in Minneapolis. There were two indictments; one indictment had three counts and the other indictment had one count, a conspiracy count. In one indictment, the first count charged a transportation trip with a victim on the first part of November, 1952, and in that same indictment there were two other counts charging Bannarn with; another count charging Bannarn with the transportation of a woman to Chicago in August, 1953. The third count was charging this same man on the same date with buying a railroad ticket to transport this woman to Chicago. The other indictment was a conspiracy count with one Donald Nelson to transport this woman to Chicago in November of 1952.

I was retained to defend only Mr. Bannarn and had nothing to do with Donald Nelson. This was my first meeting with Robert Bannarn, and I observed that he was a colored gentleman. He was a very difficult client. I couldn't make too much sense with him. He was not uncooperative . . . I just couldn't keep him on a subject or make too much sense with him. He was vague and I think distrustful . . . there was something. I couldn't reach harmony with him. I may have gotten a few facts from him, but not many that would be of any help to me to defending the case. I represented him at the arraignment in Minneapolis and he entered a plea of not guilty.

I first met Mary K. Johnson when she came to my office many days before the trial. Bannarn's grandmother called me and told me she was coming in to see me. I was informed by either Bannarn or the grandmother that she was the so-called victim in the indictments. We then had a conversation in my office; she and I were the only persons present.

Her conversation on that occasion was as it was in most of her conversations. There were two things that she wanted from me very much. One of them was that I make arrangements to have her marry Bobby Bannarn, and the other thing was that she insisted that I do my utmost to convince Bobby Bannarn that he should plead guilty to those, to the counts that occurred in August of 1953 whereby they took the railroad trip. She informed me and kept informing me that there were, that the Government could more than prove he was guilty of it because there were FBI agents at the railroad station when they left Minneapolis; there were FBI agents at the railroad station when they came into Chicago; that at the Grand Jury hearing which had occurred a short time previous, she had seen her landlord and other people from the hotel there, and that there would be no doubt they could prove their case and Bannarn should have sense and plead guilty to it. That is, to the railroad trip. There was very little said about the automobile trip because she had convinced me, and I was convinced that this railroad trip that he would plead guilty to the railroad trip and should, and that I would be derelict in my duty if I didn't convince him to. There was a lot of general conversation about the type of person, Bobby's background, her own background, there was conversation as to that. Mary K. was not dressed presentably. It was chilly at the time and she had on a short sleeved blouse or dress . . . didn't have a sweater or coat. She was dressed shabbily.

I had conversations with her after that almost every day in his office. She kept begging me to make arrangements for him to marry her, and along with that was the request to see

Bannarn, and my response to her in both instances was that I would do nothing to have her marry Bobby Bannarn, and that I could have nothing to do with her seeing him in the jail because they had a rule that only relatives visit prisoners in the Hennepin County Jail. There was a lot of conversation about her background, her life, about Bobby Bannarn's life, and about her love for Bobby Bannarn and her use of narcotics and Bobby's use of narcotics, etc. After talking to her I made several trips to the County Jail and talked to Bannarn, but Bannarn had made up his mind that he wasn't going to plead to anything at any time and he wasn't going to open his mouth to any Government agent or any Government official. He would talk to me, but always guardedly. I suggested quite strongly that he plead guilty to the railroad trip, and I prevailed on his grandmother to also talk to him about doing so, and eventually he agreed to do so. I told him that I was sure that the Government would consent to a plea on one count and would dismiss the other charges and consequently he would only face a sentence on one count. That is the customary way of disposing of criminal cases where there are a number of counts against a defendant.

Witness recalls having a conference in his office when Mr. Segal was present . . . it was sometime during the week before the trial and it was in an evening of one of those days. Mary K. Johnson had told me by phone or in person that she would be up to my office around 5 o'clock that evening and I called Mr. Segal and asked him if he wanted to come over and interview her. Mr. Segal, at that time, was representing Donald Nelson in the automobile trip case. There is nothing wrong in a lawyer trying to ascertain what the facts are about a transaction, and I think a lawyer would be derelict in his duty if he didn't interview witnesses before trial. He did not recall whether Becky Aron arrived first, but she came up that evening also. Mary Johnson was there before any of the others arrived. There were four in on the conference . ... my partner would step in occasion-

ally. At first there were general conversations, and then we went out, I believe, and had some lunch at the Cafe Di Napoli on Hennepin Avenue, about a half block from my office. No discussion was had at the restaurant about the case that I can recall. We then went back to my office, and there Mary Johnson carried on most of the conversation in respect to her life, her use of narcotics, Bobby Bannarn's life, her continued feud with the Federal agents, things like that. She again kept telling me and kept impressing upon me how the Government was so well prepared on the railroad trip that she took with Bannarn a couple of months previously. There was very little said in connection with the case in which Mr. Segal was interested. I had made up my mind at that time that I wasn't going to trial with Bobby Bannarn and I was going to do my utmost to plead him guilty. I cannot recall that there was anything said about the facts on the automobile trip. I remember her saying something about working at Speigel's and I was suprised to hear her say that. I wasn't interested in the automobile trip . . . I had to overcome three counts on the railroad trip, and there was only one count on the automobile trip which was the conspiracy count. The conference did not last very long and we broke up in early evening between 6:30 and 7:00 p.m. Becky Aron took no active part in the conversation. She was walking in and out of the office to the washroom, and water fountain.

Mr. Segal took very little active part in any of the conversation. I had introduced Miss Johnson to Mr. Segal that night, and they did not indicate that they previously knew one another. I was only interested in Bobby Bannarn and Mary Johnson sinee the railroad trip which was only a short time previous to the conference, and what they were doing in Chicago previous to that time I was not informed. They were living together and in the terms of the street, she was hustling for him . . . there was no doubt in my mind . . . She did tell me that these people in the hotel would testify

they brought her tricks. I mean in connection with the railroad trip which was in August of 1953. That is all that I can remember took place in my office on that evening conference. I did not discuss with Ray Segal my intentions to plead Bannarn guilty to the railroad case.

The case was called for trial on October 23rd. The cases were against my client Bannarn and Donald Nelson. Motions had been made for separate trials, but the motions were denied. I participated in those motions, and I also wanted my indictments separated. At the trial to start on October 23, 1953, the four counts were to be tried as one lawsuit, and on that date I appeared in court on behalf of my client Bannarn.

At this meeting in my office that evening in the week before the trial I did not hear Mr. Segal at any time suggesting to either Becky Aron or Mary Johnson how they were to testify. I was not present on any other occasion with Mr. Segal prior to the date of trial or during the trial of Nelson when Mary Johnson or Becky Aron were present.

On the morning of the 23rd I pleaded Bannarn guilty to the conspiracy count, and the other counts were to be dismissed at the time of sentencing. That morning, however, just before the jury was called in I had a conference with Mr. Alex Dim, who was the Assistant U. S. Attorney who was handling the case for the Government, and I proposed to Mr. Dim that my client would be interested in pleading guilty to one count on the railroad trip providing the other counts would be dismissed. Mr. Dim insisted that the plea of guilty be made to the conspiracy count and he would dismiss the other indictment completely. The conspiracy count was the one in which Nelson was involved. So I prevailed on Bannarn to plead guilty to the conspiracy count involving the trip by automobile on November 10, 1952. I had also to agree that Bannarn would testify for the Government if he expected any lenience on the sentencing. After that plea of

guilty, and as far as the trial was concerned, I had no duties whatsoever to perform, except that Bannarn requested that I stay present with him in case he was called for a Government witness because Bannarn said he wouldn't testify. I became just a spectator from that time on and had no interest in the Nelson trial. The Nelson trial proceeded in a few minutes thereafter and I took no part in the proceedings of that trial. Mr. Wasserman represented Nelson with Mr. Segal sitting behind him.

Witness testified that on the evening of October 23, 1953, the first day of the trial, he did not have a meeting with Mary Johnson, Becky Aron and Ray Segal in his office, nor did he go over to a restaurant with these people on that date. After pleading Bannarn guilty, I had no further talk to Mr. Wasserman or Mr. Segal and felt very uncomfortable in their presence. He was not present on any occasion when it is claimed Mr. Segal criticized Becky Aron on her testimony. My interest in that transaction ended when I pled my client guilty, other than the part that Bannarn might play as a witness himself. I had an understanding with Mr. Dim that when they contemplated calling Mr. Bannarn he would call me so that I could be present, but they called Mr. Bannarn and I was not present nor was I called.

Witness has known Mr. Segal since he, Nemerov, was a small child. He was my father's lawyer, and I have had dealings with him since he became a lawyer. His reputation in this community for honesty and veracity is very good.

SOLOMON WASSERMAN, being first sworn, testified for the defendant as follows:

That he is an attorney at law with offices at 512 Nicollet Bldg.; born and reared and schooled in Minneapolis and at the University of Minnesota. He has a degree in law and a degree in education which I received in 1928 and a law degree later. I taught high school in Fairmount, North

Dakota, West High in Minneapolis and I have been an instructor at the Minnesota College of Law at different times. I started my practice of law in October 1934 in Minneapolis, and was in the same suite of offices with Mr. A. Ray Segal in October of 1953 though we were not partners. I was retained to represent Donald Nelson in October of 1953 and associated with me was Mr. Ray Segal. I had had no criminal experience in the Federal Courts prior to that time. Mr. Nelson was Mr. Segal's client, however, and I was associated with him in the matter. I interviewed Nelson at the County Jail in Minneapolis on several occasions and after obtaining the facts from him it was my opinion that he was innocent of the two charges against him. Prior to that time I had not talked to Mary K. Johnson nor did I know who she was. I had not talked to Becky Aron prior to that time. Prior to the time of trial he did not see Mary K. Johnson in Mr. Segal's office and the first time he saw her was on the witness stand. In the trial of Donald Nelson I did all the cross-examination. I argued the legal points of law as distinguished from points of facts, and a study of the Federal Rules of Criminal Procedure of which I was not familiar prior to that time. I participated in the entire trial of Donald Nelson. Donald Nelson testified on the stand before the case was delivered to the jury. He testified that he had driven his car to Tomah, Wisconsin. He testified of going into Wisconsin from St. Paul and through Hudson, Wisconsin. Mr. Segal handled the direct evidence on the part of the defendant and he, Segal gave the opening and closing arguments to the jury.

Witness has known Mr. Segal for 15 or 20 years, and has officed with him for about three years and has had business dealings with him and also have had contact with friends of his and other persons and he knows his reputation in the community for truthfulness and for veracity and his reputation is excellent.

CROSS-EXAMINATION

The testimony that Nelson gave about driving to Tomah, Wisconsin, was what Nelson gave himself as a witness for himself and was after Mary K. Johnson had testified and after Becky Aron had testified.

MR. A. RAY SEGAL, being first sworn, testified for the Government as follows:

That he is the defendant in this case; that he is 59 years of age, born in Minneapolis and reared in Minneapolis; attended the local public primary schools, high schools and the University of Minnesota. Prior to the University of Minnesota I graduated from Georgetown University in Washington, D. C., in 1921 after being discharged from the U. S. Navy, and then I remained in Washington, worked for the Government and attended early evening classes at Georgetown. I majored in foreign commerce and foreign trade. After completing my schooling in Washington, I kept on working for the Government and attended George Washington University Law School for one year and then came back here and finished up at the University of Minnesota in 1932. I was 35 years of age at that time. I started to practice law in 1932 in Minneapolis in the office of Neil Hughes and Don Morgan. I worked in that office about six years. My work was more on the civil side, real estate, bankruptcy, domestic relations, collections, etc.; others handled the criminal matters. After leaving that office, I associated myself with Mr. Shapiro in the Midland Bank Bldg., and have been there ever since. Mr. Wasserman rented an office from us for a short period, two or three years. Most of my business was civil business, real estate, abstracts, domestic relations problems, bankruptcy, etc. . . . I had no experience in criminal work in Federal Court until the spring of 1953. Judge Nordbye appointed me to defend a colored gentleman by the name of Howard Stone in a narcotic case. I informed Judge Nordbye that I had no experience in criminal matters, that I felt

I wouldn't be competent to handle that type of a proceeding, but Judge Nordbye prevailed upon me to handle the matter. There is no provision for any pay for that type of work. Then Donald Nelson called me from the Hennepin County Jail in the latter part of September, 1953. I went to the jail and conferred with him. He stated he had no funds, so I told him that it was too big a case to get into without a retainer, and I didn't think I would be willing to handle it and I came back to the office and I felt that was the end of the matter. I mentioned it to Mr. Wasserman and Mr. Wasserman asked me if I had any objections if he went over and had a talk with Mr. Nelson and I said no, and he went over and came back and told me that that fellow isn't guilty of anything, and did I mind if he took it over, and be associated with me, and use your name on the pleadings, and he would rely on my experience in the Stone matter to handle the case. I told Mr. Wasserman that if he wanted to do it, it was entirely up to him. Mr. Wasserman then went back and talked to Nelson again and I think Wasserman persuaded Nelson to agree to sign a note for $1,500.00, and he came back and told me about it. I told him that I would sit behind him and help him, but that I would not do any of the work. Mr. Wasserman then continued to do the work of interviewing him again, and getting the research on the law. I did not pay too much attention to the dates of the times Mr. Wasserman was having these interviews with Mr. Nelson, but it was all before October 23, 1953.

Mary K. Johnson was never in my office prior to the trial or during the trial. She was in my office in the late winter or possibly in January of 1955. She came alone and had a two-month old baby with her. That is the only time she was in my office.

Mr. Segal testified he was present at a conference in Mr. Nemerov's office, and he places the time as being two or three days before the trial was scheduled to start . . . about the 19th or 20th. He received a telephone call from Mr. Nem-

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erov who stated that he would like to have Mr. Wasserman or myself in his office late that afternoon as Mary K. Johnson was going to be there and maybe we would be interested in learning what the facts were in reference to the Nelson trial. He said "I represent Bannarn and you fellows represent Nelson, we ought to get together and see what all of these facts are that are going to be introduced in this case." I went over to his office about 5 or 5:30 p.m., and when I got there Mr. Nemerov was there, Miss Johnson was there, Becky Aron was there and I believe Norman Perl was there. On arriving at the office, someone suggested that they were hungry and wanted to have lunch, so Nemerov and myself and Becky and Miss Johnson went across the street and at the Cafe Di Napoli, and had a quick lunch, and then came back to Mr. Nemerov's office. There was no conversation between the four of them about the case at the restaurant.

We entered one of the large offices in this suite. There was a lot of conversation by Mary Johnson concerning things in general that did not seem to make sense to me. She kept rambling on about Bannarn. She seemed to be quite interested in wondering whether she could help him in any way to get out of all the trouble he was in. She wasn't particularly interested in Nelson. All I was interested in was to hear what she had to say with reference to this trip that they were supposed to have taken from Minneapolis to some place in Wisconsin and my recollection is that she mentioned that offhand, two or three times, and she mentioned about that she had known that Donald Nelson was a cab driver, and that she had talked to him about driving her and Bobby to Chicago and that she wanted to get away from the city because at that time she had stolen some narcotics from a fellow by the name of Floyd Love, and that Love was after her, and in addition her boy friend, Bannarn, had a floater, and was supposed to be out of town, and he had been dilly dallying around and she was afraid they were going to pick him up and she was anxious to have Nelson get going as fast as he

could on that particular trip. Of course Becky was in and out of the office there and took no part in the conversation, and Nemerov tried to ask her a question here and there, but sometimes she would answer and sometimes she would go on to some other subject. But the sum and substance of her conversation led me to believe that Nelson was merely going to drive her and Bannarn to Chicago for a consideration of some $45.00, as I understood it, from the conversation she was giving, and I felt in view of the rambling remarks that she had made there wasn't any kind of a case against Nelson. I think that is all there was to it because we didn't stay there very long . . . . probably 45 minutes in all.

The only information that I had from Nelson is what I got through Mr. Wasserman. There was no doubt in his mind that Mr. Nelson had gone down into Wisconsin, and the information I received through Mr. Wasserman was that it was Tomah, Wisconsin. I remember Mr. Wasserman telling me, that Mr. Nelson had told him, that when Nelson first stopped in a small town in Wisconsin to put out Bannarn and Mary K., that Bannarn made the remark "This is a hell of a thing for you to let out a nigger with a white girl in a small town like this . . . I am liable to get killed here . . . you had better drive us on to some larger town" and that there was some agreement to pay three or four dollars more for the gas to the next town.

There was nothing at all said in that office conversation as to when Mary K. Johnson became a prostitute. She did say something about having met some boy from the Wold Chamberlain Base here and had gone east with him, to Rhode Island I believe and from there she went back to New York, and she mentioned something about that she had had some relations with somebody in New York in order to get train fare to get back home, but she stopped off in Chicago on her way home.

There was never any suggestion by him that they shouldn't say they were in Wisconsin. I had no information given to

me at that conference as to what Bannarn and Mary K., were doing in Chicago after they completed the trip in November 195? and I did not know what they were doing in Chicago. She did not tell me that she was living with Bannarn as man and wife in Chicago in 1952. The first time I heard the name of Spiegel's was when she testified in court. There was nothing else in that conversation that I can recall other than that she seemed to be concerned with Bobby Bannarn and she seemed to want to protect him and to get him off with some light sentence or get him absolved of any crime of any kind. After that conference I mentioned to Mr. Nemerov that if that is all the Government has got there just isn't a case, and I determined that my client was warranted in his plea of not guilty.

We were prepared then to go to trial on Friday October 23rd. I had no previous information from Mr. Nemerov that he was going to plead Bannarn guilty of one of these charges, and it was not until trial time was I informed that Bannarn had just plead guilty. We started the trial on that Friday morning. Mr. Wasserman sat in the front seat and did all of the heavy work. I made the opening statement at the start of defendant's case. At no time during the trial did I have any conversations or conferences with Mary K. Johnson, and after that conference in Mr. Nemerov's office, I did not see Mary K. Johnson again other than when she was on the witness stand. I presented the final argument for the defendant Nelson. After the conclusion of the Nelson case I had no further contact with the case.

I saw a girl named Shelly Warren on two separate occasions at the Woman's Workhouse. I was referred to her by a colored gentleman named Godfrey Barrett who told me that Shelly was picked up by the police on the streets of Minneapolis and that he was also picked up and sent to the City Jail. He said Shelly was given ninety days in the workhouse and that he heard that a lawyer can sometimes get a person out of jail on a "floater" and he wanted to hire

me to see what I could do for Shelly. I told him it would cost him $50.00 for my services in attempting to so arrange it, and if I was not successful I would return $25.00 to him. His niece Lovie Barrett brought in $50.00 the next day, and I went out to see Shelly Warren. This was in August of 1955. I talked to Shelly Warren at the Workhouse and told her what I was trying to do and she immediately became belligerant and said "Why do I have to leave . . . I want to stay here . . ." so I determined that she would not leave town even though I was successful so I went back and so informed Mr. Barrett and returned $25.00 of the fee to him. I had no conversation with her at any time with respect to Mary K. Johnson, and my conversation with her had nothing to do with Barrett's problems or the trial of his lawsuit. On or about September 20, 1955, I was called by Godfrey Barrett to the City Jail and in conversation with him there he produced Information wherein he was charged with transporting a woman from Illinois to Minnesota, and also an Information charging him with transporting a woman from Michigan to Illinois. He told me a story of his associations with Shelly Warren and the trips they made, and he again asked me to call on Shelly Warren at the Workhouse. I called on her on September 21, 1955, and she told me about the same story that Godfrey Barrett told me. At no time did I mention to her the name of Mary K. Johnson or anything about the Donald Nelson trial. I represented Godfrey Barrett and recommended to him that he enter a plea of guilty, and he did so plead to both charges. At the time of sentencing he did not appear for Barrett, and Barrett procured another lawyer to appear with him on that occasion. That is the only experience I had with Shelly Warren or Godfrey Barrett.

As to Dorothy Nelson, she is a sister-in-law of Donald Nelson, and I may have appeared in police court for her on one occasion. I don't believe I have ever had any conversation with her in Mr. Baker's cafe. She claimed she had

some experience as a practical nurse on one occasion, and I sent her to the manager of the Second Avenue Nursing Home with my business card, and I believe she was hired to work at that nursing home and did work there for three or four months. Other than on that occasion I had no conversation with her that I can recall. As to my reason for being in Baker's place, Mr. Baker collected the rents for me at the property 707 Bradford which was occupied by colored people, and I also represented Mr. Baker as a lawyer on a few occasions. I would drop into Baker's place about once a week and pick up these rent items. This continued to June, 1953, when I took over the collection of the rents myself. This property at 707 Bradford was originally part of the Ettenberg Estate which I had probated and represented the heirs.

As to the witness Mary Jo Rice, I represented her on one occasion for driving an automobile without a license. Mr. Baker called me and asked me to put up the $75.00 bail money for her and that he would see that I was reimbursed, which I did. I had no conversation with her at any time about Mary K. Johnson, or about the Nelson trial. I had only talked to her a few minutes in the City Jail.

I represented Becky Aron on two or three occasions where she was picked up by the City Police for making a nuisance of herself around bars, and I also represented her on a matter concerning the financing of the purchase of an automobile with Donald Nelson. Mr. Segal testified that at no time did he ever tell Becky Aron or anyone else that he wanted her to get out of town, nor did he ever cause anyone else to tell her to get out of town. In the Spring of 1956 in the trial in which he was directly concerned, Becky Aron testified for the Government, and from that time on until this trial that is presently going on I did not contact Becky Aron and try to prevail upon her to not be a witness in this case. She called my office on the phone in January, 1956, regarding her arrest at the Frederic Hotel in St. Paul with Mr. Doering and was quite concerned what would happen to her. She

also called my office just two or three, four or five weeks ago and left the notation that she had been arrested and was in the City Jail, but I did not call her or represent her in any manner. I hired a private detective for the purpose of making an investigation for me in March of 1956, and after receiving some information from this detective I checked with the State automobile registration bureau and ascertained that one was a Chevrolet registered in the name of Herbert Doering at New Ulm and the other car was registered in the name of the American Insurance Company at New Ulm. I then called the American Insurance Company at New Ulm and some lady answered the phone and I inquired of her whether the company had an employee up here in Minneapolis and the answers were rather evasive and they wanted to know why I wanted to know. I said, there is a fellow up here by the name of Herbert Doering who has the American Ins. Co. car and has his own car visiting at a colored girl's house, and I am investigating some matter and I would like to know who he is because he is interfering with my investigator getting any statement at that home. The party on the other end of the phone didn't say too much and didn't give me any information. The party did not identify herself. I did not know that I was talking to the wife of Herbert Doering . . . I thought I was talking to somebody with the American Insurance Co. I then called up the next day to see if I could get any information because the first conversation was a blank. The party did not identify herself. She wanted to know why I was inquiring about the car belonging to the American Insurance Company and I told her that I was having an investigation made and somebody from the American Insurance Company was up here and I think she asked me to describe the party. I described him and I gave the same description that the Busch Detective Agency man gave me. I also told her that I was investigating and checking on a colored girl by the name of Becky Aron and that didn't seem to help the conversation. At no time did I make any statement to her about wanting Becky Aron out of town.

I did not know at that time that I was talking to the wife of Herbert Doering, but I later found out when Mr. Whitchurch called me. Later Mr. Whitchurch called me and said that I had caused a little difficulty with Doering's wife in New Ulm. I told him that I did not know that it was his wife. He said that she is pretty upset, has a heart condition and is a pretty sick woman. I told Mr. Whitchurch that the American Insurance Co. was at 525 James Ave. North, and that there was another car there in the name of Herbert Doering.

I also had a phone conversation with Mr. Sid Gislason, an attorney from New Ulm and he too mentioned that Mrs. Doering was pretty much upset, and I told him to tell her that it was all a mistake. Later Becky Aron called me on the phone and said that I had caused her a lot of trouble with her boy friend. I told her that I sent a detective agency man out there to interview her and he interfered and I didn't know who he was and I wanted to find out just what was going on. Then Mr. Doering got on the line and said "Well, now, Segal, we don't want to have no trouble or any arguments with you. We want to get this thing smoothed out and straightened out." I said, "Well Mr. Doering why did you interfere in the first place?" and he said "Well, I didn't know who this fellow was. He came up here and says he was a private detective and started asking questions and I just told Becky not to answer them and that's all there was to it. I asked him if he was a lawyer or a doctor, and he said no, and I asked him why was he interfering, and he said 'I am sorry, if you want to come down here we will give you all the information you want,' and I said, no, I cannot do that, but if you want to come along with Becky up to my office and have a stenographer here, we will get a statements." He promised to bring her up, but they did not appear.

Becky Aron appeared in my office after she was subpoened to appear before the Grand Jury at St. Paul and she asked me what to do about it. I told her to make the appearance and whatever questions were asked of her to tell the truth.

During the week immediately before the Nelson trial she was in my office on one occasion, and I remember asking her how it came about that she went along on the trip in November, 1952, and she told me that Mary Johnson wanted to get out of town because someone was after her and that they asked Donald Nelson whether he would drive them to Chicago, and he consented to drive them, and that she went along for the ride. The information she gave to him was no different than they had obtained from Donald Nelson and confirmed my opinion that Nelson was not guilty of anything, and when he went over to Nemerov's office he obtained no information that was different in substance than what was obtained from Donald Nelson. I was not interested at all in representing Bannarn.

CROSS EXAMINATION

Mr. Segal testified that he had testified in this court in March of 1956 when this same case was being tried before Judge Gunnar Nordbye and was sworn before testifying. He was asked if the following questions were asked of him and if he gave the following answers:

"'Q. Miss Rebecca Aron, this colored girl, testified that she saw you in your office. When was she in your office, if ever.

A. She has been to my office, I think about twice.'"

Mr. Segal was asked if he gave that answer at that time, and he stated that he may have.

"'Q. Had she ever been there prior to the Nelson trial?

A. No never.'"

Mr. Segal testified that he did not recall giving that answer.

"'Q. The only time you saw her prior to the Nelson trial was in the City Jail, is that correct?

A. Yes.'"

Mr. Segal stated that he did not recall that. That it was a matter of trying to think back three years and many things

A. No. I don't see anything listed on this return here.

Q. I hand you what says U. S. Individual Income Tax Return 1951. I will ask you if that income tax return as filed—I will ask you if that is your return for 1951 and what mention there is in there regarding income from this property at 707 Bradford.

A. I don't believe this is the complete return, although my name is on the front page of this 1951 return.

Q. Here are the papers that I removed from being attached. I will ask you if any of those were a part of that return as originally filed."

Mr. Hammond: Will you step up please.

(The following proceedings were at the Bench out of the hearing of the jury.)

Mr. Hammond: At this time the defendant objects to all testimony given up to this time on these income tax returns, moves that it be stricken from the record on the grounds that it is prejudicial matter and that's all it is. It doesn't tend to prove any of the issues in this case, and if this defendant is going, the Government is going to inject into this case new issues that we will have to meet by testimony that this particular property did or did not have any income that required him to report it, well, then, we are out on a limb in connection with those things. If the Government is just going to ask him on his returns whether he reported any income from this property and leave it there and don't go any further, why then it leaves the implication here that maybe this fellow is cheating on his income tax returns. It's strictly foreign matter, got nothing to do with the issues in this case, isn't intended for impeachment on the issues that we have here.

He has admitted for all practical purposes he is the owner of 707 Bradford. Other than that I don't see it has anything, this type of testimony does any other thing in this lawsuit except to prejudice this defendant that maybe in his income

tax returns he was cheating or he was evading taxes in connection with this property. How that can have any bearing upon the issues on which he is charged here I don't know. Unless we have to meet this, we have to go in and show by a great deal of evidence that there wasn't any income on this property which he was required to report.

Mr. Janes: This witness testified yesterday that he was up in this area, was associated with Jimmy Baker's and 707 Bradford because he was honorably representing an estate, through his testimony, clearly implied that he was collecting for that estate through 1953, and I think we are entitled to examine his actions in that regard, that was his basis for his explanation of being in this notorious area.

Mr. Hammond: Yes. He completed that, but to go into it any further and leave the implication here that maybe this fellow is cheating on his income tax returns way back in those early years and leave that inferecnce here with that jury is just prejudicial as can be. How are we going to meet that unless we get into it and prove it now.

Mr. Janes: Further, he testified in regard to what he paid for that property, that the property had gone way down in value on direct examination and the amount of income in these returns is as much as $2,000 a year on property he paid $4,100.00 for. I think is definitely material to the honorable situation that this witness was trying to paint for his reason for being in north Minneapolis.

Mr. Ryan: Which is again the same kind of thing. I mean they are now initially, and if the Court has read the transcript, it is quite clear the Government is attempting to show that this defendant frequented Jimmy Baker's place, is again testimony directed at solely blackening him and it goes not to the issues of this case. Now, we are getting even further afield because of the same attempt of the Government to show that kind of thing.

Mr. Janes: This person is not only a defendant, he is a witness in this case and has testified to these matters, and it was on his testimony where he said 'You can see my income tax returns' and it wasn't until then that the income tax returns were brought out.

The Court: Now, tell me where do you expect to end up? Do you expect to show more income tax returns to show that he hasn't reported . . .

Mr. Janes: No. I expect to show more income tax returns which shows the amount he reported is as much as $2,000.00 one year from this property.

* * * * *

"The Court: These first income tax returns, one or two of them show he didn't report?

Mr. Janes: Didn't report it.

The Court: Subsequent ones show he did report.

* * * * *

"The Court: What is the long range objective in introducing it, to show he actually owned it and got income from it?

Mr. Janes: That is one objective.

Mr. Hammond: He admits that. He testified to that.

Mr. Janes: And there is another objective and that is that he on direct examination attempted to show that he was in this notorious north Minneapolis area for the legitimate purpose of legitimately and properly representing an estate and this goes to the matter of his representation of that estate. He said he bought the property for $4,100.00 himself from the estate, he was putting up a legitimate reason for his being in north Minneapolis and this property having been purchased for $4100.00 and he said it had gone way down in value, was his testimony yesterday, and that was why he had trouble renting it and needed Jimmy Baker and this goes to

show that the property had not gone way down in value but it produced this income.

• • • • •

"Mr. Janes: Like to be sure '52 showed it rather than '53. I will check. The 1952 return, that is the return that hasn't yet been mentioned shows substantial income and the other returns show income from this property of some substance.

Mr. Ryan: I think counsel has just said what I finished saying, that all of this inquiry stems from a general attempt on the Government to blacken this defendant's character generally by attempting to show association on Olson Boulevard, the kind of thing that is held to be inadmissible, a general attack upon his character and that's why we are in this difficulty now.

The Court: Objection is overruled. You may proceed."

The last question is read to Mr. Segal, as to whether certain papers were part of the 1951 return, and he states that Schedule J of the partnership and the profit and loss statement is not here, and that there could be papers missing from the return relating to rental income. Mr. Segal is handed his income tax return for 1952 and asked if it is his return, and he stated it was and included income from the 707 Bradford property:

"Q. What income does it show of your income from the property on Bradford for that year.

Mr. Hammond: I understand, Your Honor, I have an objection to all this testimony as wholly irrelevant and immaterial to our inquiry and also prejudicial.

The Court: Your objection is noted. You may answer."

Mr. Segal testified that it shows a net rental income of $1663.03 from 707 Bradford. Mr. Segal is shown his income tax return for 1953 and testified that the net income from the 707 Bradford property for that year was $821.47. Mr. Segal

testified that the property is still under his control but that the record owner is Michael Cuda; that for all practical purposes witness owns it. He testified yesterday that at the time this estate sold the property it had lost a great deal of valne. Mr. Walker lived in the upstairs half of the building . . . . it's a two story building, a duplex. Mr. Walker has lived there about eight years. His rent in 1952 or 1953 was $30.00 a week for full maintenance, heat, gas, electric, repairs and partly furnished, but he never paid the full amount; he is somewhere in arrears now in the sum of approximately nine hundred or a thousand dollars.

Mrs. Cuda who is the manager of the rest home is the wife of Michael Cuda. I have been up to Jimmy Baker's several times a month.

"Q. And Jimmy Baker's is a principal hangout for Minneapolis prostitutes?

A. I wouldn't know that.

Mr. Hammond: I object to that as highly prejudicial. It has got no other purpose than to prejudice this defendant, and I object to it as wholly irrelevant and immaterial to this inquiry here.

The Court: Objection sustained. The answer may be stricken."

I may have seen Becky Aron at Jimmy Baker's place once or twice and I possibly may have seen Dorothy Nelson there. I don't recall ever seeing Mary Jo Rice around there. I have never seen Mary K. Johnson around there.

I was in this court room when Mr. Nemerov testified; and I recall the conference in his office prior to the Nelson trial. I heard his testimony that Mary K. Johnson was telling matters regarding her life, but I didn't pay any particular attention to her ramblings. She may have said something about narcotics and her use of it but I do not recall that part of it. She spoke in endearing terms of Bannarn. She did not

speak of her life with him in Chicago following the trip to Chicago in November, 1952, but did speak about a railroad trip in 1953. She did say that she didn't see Bannarn for a couple of months after they got there in November 1952. I wasn't interested in anything except as it had reference to this trip of November 11th, so that when she got off on some other tangent I wasn't paying any attention. I represented only Nelson who was charged with participation in the trip of November 11th, 1952, and conspiracy in regard to it . . . two charges. Her life and whether she had been a prostitute in the past was of no interest to me, except that I do recall her saying something about having gone to the state of Rhode Island and engaging in prostitution; that her boy friend from the Naval station abandoned her and she went from there to New York and she said she was prostituting herself in New York because she had to get money for train fare and food from whence she went to Chicago. I didn't pay too much attention to it except that she mentioned these places. She was talking about the railroad trip where a number of agents were at the station in Minneapolis and also in the station at Chicago. I don't recall Mary K. Johnson saying anything about working at Spiegel's when I was there . . . she may have told Mr. Nemerov that at some other time. I do not recall Mary K. Johnson saying anything about narcotics at that time, altho I do have a recollection that she said something about having brought back some narcotics with her when she appeared before the Grand Jury and an F.B.I. agent talked to her about it.

Mr. Segal testified that he did not recall having a telephone conversation with any other persons in the Doering-Becky Aron transaction other than Mr. Whitehurch; Mr. Gislason and Mr. and Mrs. Doering and also Becky Aron:

"Mr. Hammond: It is understood, Your Honor, we have objection to all this line of testimony on this Doering matter?

The Court: Your objections are noted, counsel."

Mr. Segal testified that he called the American Insurance Company office at New Ulm as he had testified to, and he possibly could have called the company office in Minneapolis, but I do not recall telling them that I was going to call his wife.

"Q. And do you recall her saying anything back to you, 'Well, you wouldn't do a thing like that?'

A. Who said 'You wouldn't do a thing like that?'

Q. The voice at the other end of the American Insurance Co.

A. I don't recall that.

Q. And do you recall then saying 'Don't you think his wife ought to know about it?'

A. I don't recall it . . . if I didn't I should have."

I recall Mr. Witchurch calling me on March 17th, and I heard his testimony in court wherein he claimed he heard Mr. Doering say " 'Why should I get out of town' " but I don't recall anything like that ever happening . . . there would be no occasion for me to say that for I had nothing to do with Mr. Doering. I also heard Mr. Whitchurch testify that he heard Mr. Doering transmit the words into the telephone " 'Why should I get her out of town' ". I certainly don't recall that and I certainly do deny it. I do not recall any conversation with Mr. Doering wherein it is claimed that Mr. Doering said " 'There isn't any more harm than you can do . . . you have done it all already' ". At that time I didn't know Mr. Doering was employed by the American Insurance Company. When I checked the license on the automobile, it was listed in the name of that company. I heard Mrs. Doering's testimony wherein she claimed I stated that I wanted to get Becky Aron out of town, but I made no such statement to her. I had a conversation with Mr. Gislason and as I recall the conversation I stated to him that some fellow was interfering with my investigation of the case or preventing my getting a statement. I may have said something to the effect that I was fighting for my life.

CHARLOTTE E. JOHNSON, being first sworn testified for the defendant as follows:

That she is married and lives in Minneapolis and is a secretary for Mr. Segal and Mr. Shapiro in the offices at 854 Midland Bank Bldg., Minneapolis. She has been employed there 13 years. She was working in that office when the case of United States versus Donald Nelson was being tried in these courts. Witness testified that Mary K. Johnson was never in her office at any time prior to the trial of the Nelson case. She does remember Mary K. Johnson coming into the office in the early spring or late fall of the following year, with a baby in her arms.

CROSS EXAMINATION

She has been married about 14½ years and has worked for Mr. Segal about 13 years. I go out to lunch at the noon hour and have coffee breaks if I have an opportunity. People who come in by appointment would be recorded in the attorney's books, but if not on appointment it would not be recorded. I usually know who people are who come into the office.

IRVING C. IVERSON, being first sworn, testified for the defendant as follows:

That he is an attorney at law practicing his profession in Minneapolis, Minn., and has been practicing since 1948. That he is Judge of the Municipal Court in Edina, a suburb of Minneapolis, and has been such for five and one-half years. During his practice of law he has known Mr. A. Ray Segal for about ten years, and has had contact with him from time to time, legal and otherwise, and knows his reputation for truth and veracity and it has always been good.

CROSS-EXAMINATION

I have lived in Minneapolis all my life and have heard no one question his reputation, only in connection with this

trial. To the question how he knew he had a good reputation if he never heard his reputation discussed, he testified that in a building like the Midland Bank Bldg., where there are hundreds of lawyers, at one time or another all lawyers are discussed. He did not remember any specific instance of that kind of discussion about Mr. Segal. . . . I know that on many occasions there would have been discussions relative to Mr. Segal about his character and veracity.

"Mr. Janes: Your Honor, before putting the next question I thought it would be well to approach the Bench because it does open up a new subject. I intend to ask the witness if he has ever heard any discussion as to whether on the subject of this matter of—strike all that—have you ever heard this matter discussed or heard that in 1945 in a case pending before Judge LaBelle, the Municipal Judge of Minneapolis, that Judge LaBelle directed the attorney for the other party to report to the Ethics Committee of the Hennepin County Bar Association that an investigation should be conducted in regard to Mr. Segal having perjured himself in a case in that he had presented to the Court a Post Office form receipt for registered delivery which had been in his possession from the time it was delivered by the Post Office until presented to the Court and that the date thereon had been altered and that Mr. Segal had testified as to what time of day the letter for which that receipt had been given was one time of day and the Post Office Department records indicated and other evidence indicated it had been another time of day.

The Court: I didn't get the sense of it all.

Mr. Janes: The sense of it is in effect that Judge LaBelle, the trial judge of the Municipal court of the case in which the defendant was the attorney for the plaintiff, and testified for the plaintiff and presented to the Court a receipt for registered letter which quite apparently was altered so that the Judge directed that this matter be reported to the Ethics Committee of the Hennepin County Bar Association and sub-

mit that that is perfectly proper testimony under the Supreme Court decision of Michelson vs. U. S. which I have here on the table.

(Mr. Janes then reads from the Michelson case.)

Mr. Janes: I intend to ask the witness 'Have you heard' just as was done here, and I have here a copy of a letter which was written by Mr. Townsend November 30, 1945 addressed to the Chairman of the Ethics Committee of the Hennepin County Bar Association. Mr. Townsend was attorney for the other side in that case and that sets forth the matters which I have stated, and I have the transcript that is referred to.

(Further discussion between Court and counsel.)

The Court: Does counsel for the defendant have any observations you want to make about this now?

Mr. Hammond: Our observations are that it would be very, very, very prejudicial if we are going in and try out this whole transaction here, which we will have to do if it comes up. We certainly will have to try it out. We can't let it just come in there and just stand there.

The Court: I just read the pertinent parts or what appear to be the pertinent parts of Michelson vs. U. S.

Mr. Hammond: That case was a conviction, Your Honor, an entirely different breed of cat.

(Further discussion between Court and Counsel.)

Mr. Ryan: I think there are a number of very specific objections to it, One, question of time. This matter occurred in 1945, eleven years ago.

• • • • •

"(Further legal argument by Mr. Ryan.)

Mr. Hammond: He is going to give the substance of it to this witness and ask under the circumstances whether he thinks that would affect his reputation for truth and veracity

and he is going to mention Judge LaBelle's name and going to mention enough facts in this case so that the jury will get the implication that Segal did something wrong on this occasion.

* * * * *

"The Court: I am going to let him ask the question. Your objection is overruled.

* * * * *

"The Court: * * * I have been given this instruction. Do you want to object to that? Your objection to permitting the asking of the question is noted. I feel this instruction should be given. Do you want to express yourself on that or do you prefer the instruction not be given? . . . Do you want me to give that instruction?

Mr. Hammond: Yes.

(The following proceedings had in open court.)

The Court: I instruct the jury that what is happening now is this: The defendant has called character witnesses, and the basis for the evidence given by those character witnesses is the reputation of the defendant in the community, and since the defendant tenders the issue of his reputation the prosecution may ask the witness if he has heard of various incidents in his career. I say to you that regardless of his answer you are not to assume that the incidents asked about actually took place. All that is happening is that this witness' standard of opinion of the reputation of the defendant is being tested."

"By Mr. Janes:

Q. Mr. Iverson, have you heard anything about the proceedings in the case of Max Herman against Joseph St. Dennis, which was in Municipal Court, City of Minneapolis, in October 1945, and have you heard whether in that trial the defendant, Mr. A. Ray Segal, presented to the Court and

offered in evidence a card registered mail postal receipt in which it appeared that the date on the receipt had been rewritten from the time it had first been written, as to date, and that thereafter the postal authorities here in the City of Minneapolis testified that the date that was then apparently the date, the rewritten date on the card as offered in evidence, was an earlier date than the records of the Minneapolis Post Office Department, as testified to in that case showed. That thereafter Mr. Segal representing the plaintiff, whose case depended on the receipt, the claim of having been received on the date shown in the altered date, Mr. Segal then moved for dismissal of the case. Have you heard about that?

A. I have never heard about that matter.

Mr. Janes: No further questions."

ELMER R. ANDERSON, being first sworn testified for the defendant as follows:

That he is a lawyer practicing his profession in the City of Minneapolis, and has been Treasurer and President of the Hennepin County Bar Association, and he testified that the reputation of Mr. A. Ray Segal for truth and veracity was good.

CROSS EXAMINATION

He never sat down and actually discussed Mr. Segal's reputation. He never heard of the case of Max Herman vs. Joseph St. Dennis case in Municipal Court nor the alleged participation of Mr. Segal in that case.

ALBERT M. ANDERSON, being first sworn testified for the defendant as follows:

That he is a lawyer practicing his profession in the City of Minneapolis since 1913 with offices in the Midland Bank Bldg. He has known Mr. Segal ten or 15 years and had dealings with him on legal matters over that period of time.

Mr. Segal's reputation in this community for truth and veracity is good.

CROSS EXAMINATION

I have never heard any one question Mr. Segal's reputation for truth and veracity. I have talked to people who know him and they always spoke well of him.

Witness is asked regarding the details of the Max Herman against St. Dennis case in Municipal Court of Minneapolis and Mr. Segal's participation in that case, and the witness states that he has never heard of that matter, nor did he ever hear it discussed around the Municipal Court in Minneapolis.

JOHN F. KNUTSON, being first sworn, testified for the defendant as follows:

That he is Vice President of the Midland National Bank of Minneapolis and has been associated with that bank for thirty years. As a banker I became acquainted with Mr. A. Ray Segal and have known him for about seven years, and his reputation in this community for truth and veracity is excellent.

MICHAEL J. WELSH, being first sworn, testified for the defendant as follows:

That he is an attorney at law, practicing his profession in the City of Minneapolis; and I represent the Twin City Lines and Twin City Motor Bus Company and Minneapolis Street Railway, and St. Paul City Railway, primarily. I handle claims against those companies and try their cases in court. In that work I became acquainted with a great many lawyers in the Twin Cities. In that work I became acquainted with Mr. A. Ray Segal and had dealings with him on many occasions. I have discussed Mr. Segal at times with others as to his reputation as a lawyer and as a citizen in this community, and know his reputation, and it is good.

CROSS EXAMINATION

Witness is asked what work is done by Mr. Fred Ossana of his company. Witness is also asked if he has heard about the Municipal Court case above referred to of Max Herman vs. St. Dennis, and witness states that he has heard nothing about such a case.

JOHN B. HALLORAN, being first sworn, testified for the defendant as follows:

That he resides in Minneapolis and is a lawyer having practiced his profession since 1938; that he knows Mr. Segal and knows his reputation in this community for truth and veracity, and that it is good.

CROSS EXAMINATION

The lawyers and people that I have known that have known Mr. Segal, everything I have heard about him has been the very best.

MR. RALPH S. PARKER, being first sworn, testified for the defendant as follows:

That he resides in Minneapolis, is a lawyer with offices in the Midland Bank Building; and "I have been a member of the Hennepin County Ethics Committee for approximately 14 or 15 years, with the exception of one year. That since July of 1952 I have been Secretary of the Hennepin County Ethics Committee. I have known Mr. Segal since about 1932 or 1934 and have known him continually since that time . . . had cases with him representing clients and other matters." He knows his reputation for truth and veracity, and it is good.

CROSS EXAMINATION

I am the custodian of the files of the Ethics Committee. Witness is then asked about the case of Max Herman against St. Dennis in the Municipal Court of Minneapolis and the

facts were stated to the witness substantially as stated to the character witness Irving C. Iverson. Witness stated that he recalled no such matter. Witness testified that he examined the files of the Ethics Committee of the Hennepin County Bar association pertaining to Mr. Segal and he found nothing in the files pertaining to Mr. Segal. I do not have the files prior to the years that Mr. Edward Cohen was Secretary. We do not keep files longer than six years. I keep a cross index of every attorney that has a complaint against him and also the complainant since I have been in, which runs back to July 1st of 1952 but not prior to that time.

I said that Mr. Segal's reputation for truth and veracity was good, and I had occasion to check it on one occasion in 1949 or 1950 . . . I wanted to get some accommodation from Mr. Segal and I called him up on the phone and I called several people to find out if his word was good over the phone, and they all said his word over the phone was good.

RE-DIRECT EXAMINATION

Witness testified that the function of the Ethics Committee was to take complaints against lawyers charged with unethical conduct, and after the complaint is made the Secretary keeps a record of it and either refers it to a member of the Committee or makes the investigation himself. We check into it to see if the complaint is true or not true and whether it constitutes unethical conduct, and if unethical conduct is found, certain recommendations are made. It is the policing organization of the Bar Association. Necessarily there are a great many complaints, about overcharging clients and matters of that kind and we try to look into it and try to see whether the lawyer is at fault or whether the complaint is true or not. I found no files against Mr. Segal.

RECROSS EXAMINATION

ROMEO J. RILEY, being first sworn, testified for the defendant as follows:

That he resides in Minneapolis and that he is an Alderman of the 7th Ward of the City of Minneapolis having been in that position 22 years. Outside of his public work, he is a jobber of soap and chemicals. I have known Mr. Segal since around 1937 and have had many dealings with him, one in connection with his rest home which requires a license, and I have also sold him soap. I know his reputation in this community and it is very good.

CROSS EXAMINATION

I have never heard his reputation questioned. I have heard it discussed and it was good.

GLENN D. MOYER, being first sworn, testified for the defendant as follows:

That he lives in Minneapolis, is 63 years of age, and is Secretary of the Minneapolis Abstract Corporation. The nature of our business is extending abstracts of title to real estate, and in that work we do business with lawyers. I know Mr. Ray Segal and have known him for twenty or twenty five years, and know his reputation in this community for truth and veracity to be good.

CROSS EXAMINATION

Witness testified that he never heard any person question Mr. Segal's reputation for truth and veracity.

EDWARD N. THIELEN, being first sworn, testified for the defendant as follows:

That he lives in Minneapolis and is Deputy County Treasurer of Hennepin County and in that work comes in contact with a great many lawyers. He has also known Mr. A. Ray Segal and knows his reputation in this community for truth and veracity, and it is of the best.

CROSS EXAMINATION

I have heard people say that Ray was a very nice man to deal with and upright and honest in all his dealings.

JOHN H. CONWAY, being first sworn, testified for the defendant as follows:

That he resides in Minneapolis, and is employed by the Board of Public Welfare for the City of Minneapolis as a claims investigation supervisor, having to do with incoming money. I have known Mr. Segal about 32 years, and have dealings with him in connection with his rest homes in the City of Minneapolis. I know his reputation in this community for truth and veracity, and it is very good.

CROSS EXAMINATION

I never heard any person question his reputation for truth and veracity.

MARGARET S. BROOKS, being first sworn, testified for the defendant as follows:

That she resides in Minneapolis, and is employed as a Clerk in the District Court of Hennepin County at Minneapolis as a file clerk. I have known Mr. Segal about thirteen years and know his reputation in this community for truth and veracity, and it is very good.

CROSS EXAMINATION

I know he has a good reputation because I never heard anything against his reputation.

LAWRENCE O. LARSON, being first sworn, testified for the defendant as follows:

That he is a lawyer, and has practiced his profession in the City of Minneapolis since 1936, and has lived in Minneapolis since 1929 and before that in St. Paul. I was

employed by the Minneapolis Street Railway and Twin City Motor Bus Company from 1936 to 1943 when I went into the service, and from 1946 to 1948 when I went into private practice. I specialize mostly in personal injury litigation and representing insurance companies. While with the Street Car Company I came in contact with a great share of the lawyers in the Minneapolis area with respect to claims, and in that work I got to know the lawyers very well as to their honesty and truthfulness in the making of claims, and it is very essential in that work that you know whether or not the lawyer you are dealing with is reliable. I have known Mr. Ray Segal since 1940 and know his reputation in this community for truth and veracity to be good.

CROSS EXAMINATION

I have never heard Mr. Segal's reputation for truth and veracity questioned.

Witness is then asked the question in substantially the same form as asked previous witnesses regarding the case of Max Herman vs. St. Dennis and Mr. A. Ray Segal's alleged participation in that case, and witness states that he has not heard of that matter.

"Mr. Hammond: The defendant rests, Your Honor.

Mr. Janes: The Government rests."

(The following proceedings took place in the Chambers of the Court.)

"The Court: Let the record show all attorneys are here and somebody wants to make a motion.

Mr. Hammond: Defendant is here also.

I believe, your Honor, that there are at least two matters that are still pending before the Court on motions to strike certain testimony. I call the Court's attention to the fact that there was a motion to strike certain testimony given in con-

nection with a transaction in which Godfrey Barrett was involved. I believe there is also a motion to strike pending before the Court some testimony relating to certain income tax return matters of Mr. Segal relating to the property at 707 Bradford. I may be mis-speaking on that, but I know there are two motions to strike pending.

Mr. Ryan: I thought it was to the testimony of Mr. Doering.

Mr. Hammond: Yes, and there was a motion to strike as to the testimony of Herb Doering. At this time the defendant makes a motion to strike all the testimony, if any there is, relating to certain questions asked the witnesses this morning about a transaction that occurred in 1945 regarding a lawsuit between one Max Herman and between one St. Dennis in which it is contended that Mr. Segal was the attorney for the plaintiff.

* * * * *

"The Court: No, that motion is denied.

Mr. Hammond: The motions to strike are denied.

The Court: The motion you just made is denied. If you have any further motions make them.

Mr. Hammond: The one you held in abeyance.

The Court: I don't recall holding any in abeyance.

Mr. Ryan: In connection with Shelly Warren's testimony.

* * * * *

"Mr. Ryan: The Court may remember we first made a motion for a mistrial and then there was testimony introduced roughly to the effect that this defendant had invited Shelly Warren to deny certain things in connection with a separate and different case in which Godfrey Lee Barrett was the defendant, and the Court denied the motion for a

mistrial and then we made a further motion to strike and that motion the Court held that under advisement.

The Court: Is that where it was sought to elicit from the witness the fact that the defendant had said to her about how Mary K. Johnson testified.

Mr. Ryan: No. That part is certainly admissible I would think. But the part in which it was claimed the defendant had advised Shelly Warren as to how she was to testify in a case in which she was a witness, the case of U. S. vs. Godfrey Barrett, being a separate transaction. You remember the Government argued that because it was part of the same conversation that it was admissible.

The Court: I didn't rule on that motion?

Mr. Ryan: You have not ruled.

The Court: I will now. The motion is denied.

Mr. Hammond: I am sure there was one more thing.

Mr. Ryan: It may be that the Doering matter has not been determined. That is the only possibility I know of.

The Court: Do you want to repeat that one so to be sure your record is all right.

Mr. Hammond: At this time the defendant moves to strike all the testimony now in the record bearing on the Herbert Doering transaction where one Becky Aron was involved that was supposed to have occurred in March of 1955 on the grounds that it has no probative value and does not tend to prove any of the issues in this case and it is highly prejudicial.

• • • • •

"The Court: The motion is denied . . .

Mr. Hammond: • • • Now at this time the defendant moves the Court for a directed verdict of acquittal of the defendant on the grounds that there is no evidence and cer-

tainly no substantial evidence that would sustain any other conclusion.

The Court: The motion is denied.

(Requested instructions then discussed by Court and Counsel.)

DEFENDANT'S REQUEST NO. 3

"Neither the verdict nor the ultimate disposition of the Nelson case being material in this trial, it is respectively requested that the court in its instructions omit any reference to either the verdict or the ultimate action of the court in that case. The defendant requests that the court not mention or make reference to the former trial between the government and the defendant, A. Ray Segal, involving these same charges."

DEFENDANT'S REQUEST NO. 13

"Now where it appears that witnesses produced here were prostitutes, addicted to narcotics, or have been convicted of a crime or crimes, the testimony of such witness or witnesses are competent for you to consider, but you should examine their testimony with great care and carefully scrutinize it and accept it only if it has the ring of truth. Otherwise, you should disregard it. If any witness has willfully testified falsely to any material matter during this trial, you are at liberty to disregard his or her entire testimony except to the extent that you find it corroborated by other credible testimony."

GOVERNMENT REQUEST NO. 6

"You are instructed that the fact that Mary K. Johnson has admitted that she had committed perjury in giving false testimony in the cases of United States v. Donald Nelson, Criminal Nos. 8416 and 8445, is no defense to this defendant, as she is not to be considered as an accomplice to the crime of subornation of perjury. The fact that she has been a prosti-

tute and narcotic addict is no defense to this defendant. However, you are instructed that you should receive her testimony with care and caution.

United States v. Thompson (Ore. 1887) 31 F. 331."

GOVERNMENT'S REQUEST NO. 8-A

"We suggest that Government's Request No. 8 as modified, have inserted therein at the end of its first paragraph the following:

One witness, Mary K. Johnson, has testified here that she gave false testimony as a witness on the trial of the Nelson cases with respect to the questions and answers to which I have previously referred. In considering whether or not the requirement of corroboration has been met you may consider the testimony of other witnesses insofar as it bears upon the truth or falsity of such testimony and such facts and circumstances, if any there be, which tend to throw light on the truth or falsity of such testimony and such admissions by word or act, if any, as you may find to have been made on those matters by the defendant, Segal himself.

As to all such evidence of corroboration you the jury are to be the sole judges of its worth and weight.

Catrino v. United States, 9th Cir., 176 F.2d, 884, 888, Footnote 10.

U. S. v. Searey, 3rd Cir., 180 F. 2d 837, 839, 840."

GOVERNMENT'S REQUESTED INSTRUCTION NO. 9

"The Government has introduced evidence on this trial bearing on the matter of whether the defendant A. Ray Segal, attempted to impede the appearance of Rebecca Aron at a previous trial of this same case or the giving of testimony by her at such previous trial.

Such evidence may be considered by you and given such weight as you the jury determine it to be entitled as bearing

on the issue of the defendant's guilt or innocence for which he is now being tried.

You the jury will weigh and assess such evidence by the rules and accordng to the tests which I have given you to be applied to the evidence generally and should be considered by you with all the other evidence in the case."

Wallace v. U. S. 7th Cir., 243 Fed., 300, 308.

(The following is a transcript of the proceedings which took place in Chambers out of the hearing of the jury with reference to jury instructions)

All counsel present and the defendant.

(The matter narrated will relate only to Requested Instructions to which the defendant objected at the time and error is now claimed.)

"The Court: No. 5 will be given. Is there objection to No. 6? (Referring to Government's requested Instruction No. 6, printed, supra.)

Mr. Hammond: Well, Yes. We have objection to bunching that all together.

Mr. Ryan: I have an objection that to say that she has admitted giving perjury is no defense to this defendant is much too broad a statement. The fact she admitted on this witness stand that she has committed perjury does make her a witness upon whom very little reliance ought to be placed, and the jury would understand I would think, the Court saying it is no defense to this defendant would be broader than the Court would mean. It would be in a way whitewashing her and, of course, the jury is, particularly in this situation, has got to make a determination as to what extent they believe her in any regard.

The Court: No. 6 will be given.

The Court: No. 8?

(Discussion by Attorneys and Court)

The Court: But now Mr. Hammond, you still make an objection to this on the theory that admission by the defendant, if any, wouldn't be sufficient corroborating testimony, is that your objection to this?

Mr. Hammond: That's right.

(Discussion by Court and Counsel)

The Court: * * * Government's Request No. 8 * * * shall we take that up first? * * * Is there any objection to that? (Referring to 8-A, printed, supra.)

Mr. Ryan: Yes.

Mr. Hammond: We object.

Mr. Ryan: I think the point of it is this; As far as what the defendant or Mary K. Johnson says on the witness stand about what Mary K. Johnson previously said, the evidence is hearsay for the purpose of corroboration. There is no difference between that situation and a witness testifying "Yes, the automobile was going 80 miles an hour" and then later testifying "I told my wife the next day that it was going 80 miles an hour." It does not serve to corroborate the fact that the automobile was going 80 miles an hour. Now, we realize that what she may have said to the accused here bears upon the question of subornation and is admissible, but it cannot and does not bear upon the question of the actual perjury and is not corroboration because in that regard it is hearsay so it ought not be included in any such instruction having to do with corroboration. It simply is a prior statement of the same witness and whether it comes from her lips or the accused's lips it's still hearsay in that regard as to the fact of whether, for instance, she worked at Spiegel's. Our objection remains the same. The McQuarter (?) case indicates the kind of thing and we have given you a quote from it, that is corroboration that is independent facts that bear upon

whether she did or did not work at Spiegel's, how long she worked there, testimony that Spiegel people are corroboration.

The Court: I will give No. 8.

Mr. Janes: This is 8-A.

The Court: 8-A. Let the record show defendant objects to the giving of 8-A.

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Court: No. 9?

* * * *

"Mr. Hammond: We certainly object to 9.

The Court: Why?

Mr. Hammond: Because there is no evidence here to show that A. Ray Segal attempted to impede the appearance of Becky Aron, and it's not sufficient to submit to this jury at all. Becky Aron didn't testify she was impeded.

Mr. Ryan: She testified exactly to the contrary. * * * She testified that A. Ray Segal did not at any time ask her to leave town or do anything about her, even.

Mr. Janes: No, but there is considerable testimony of the efforts made to accomplish that purpose, and you note that this instruction is headed with the words "Attempted to impede."

The Court: I think that's all right. No. 9 is given.

* * * * * * * * *

"The Court: Then No. 3? (Referring to Defendant's Requested Instruction No. 3, printed supra.)

Mr. Janes: And that, Your Honor, is where the Government believes that the jury in order to understand the circumstances of the situation around which the perjury is

charged to have been made and to have been suborned, that the jury should know what the circumstances of the Nelson case were.

The Court: How the Nelson case came out?

Mr. Janes: Yes.

Mr. Ryan: I don't think that is material to this case at all.

Mr. Hammond: No. Whether there was an acquittal or conviction wouldn't make any difference.

(Counsel state their respective views to the Court)

The Court: Well, for the record I will deny your Request No. 3 insofar as it pertains to refraining from telling the jury what happened in the Nelson case. I will just think about it. If I think it is necessary to their understanding of it I will submit it, if not, I won't, but the record will show your objection. Now, what about the second part of your request of No. 3 which deals with whether or not mention should be made of the former Segal trial?

Mr. Ryan: That is just about as relevant as reference to the Nelson case. It's none of their business.

(Counsel state their respective views to the Court)

The Court: I wonder if it wouldn't be, defendant wouldn't be entitled to a statement to the effect that what happened in a previous trial or fact there was a previous trial is of no concern of theirs and shouldn't be considered by them in considering this case. Here they have these little snatches of evidence about this last case. I wonder if the defendant shouldn't have something in his own defense to get it out of their minds clean, no matter what happened in the first trial, this is the case you consider solely on the evidence and law here. So in your own interest I wonder if something shouldn't be said about it?

Mr. Hammond: Well, I think it would probably be safer to make a statement such as that. We wouldn't object to a statement like that.

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"The Court: So technically I deny all of defendant's request No. 3, and I will give the instruction which Mr. Hammond will prepare in a fair way which will ask them to disregard the results of the previous trial."

(Caption)

CHARGE TO THE JURY

"The Court: Well, members of the jury, I wish to thank you for your service in this case. You have been very attentive, very prompt, paid especially good attention. The case has been rather long, but has been very well tried. It becomes my duty as Judge now to instruct you concerning the law applicable to this case, and it is your duty as jurors to follow the law as I shall state it to you.

"The function of the jury is to try the issues of fact that are presented by the allegations in the indictment which has been filed here and the defendant's plea of not guilty. This duty you should perform uninfluenced by pity for the defendant or by passion or prejudice against him. You must not suffer yourselves to be biased against the defendant because an indictment has been filed against him or because he has been brought before the Court to stand trial. None of these facts is evidence of his guilt, and you are not permitted to infer or to speculate from any or all of them that he is more likely to be guilty than innocent.

"You are to be governed solely by the evidence introduced in this trial and by the law as I shall state it to you. The law forbids you to be governed by sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling. Both the Government and the defendant have a right to demand, and they do demand and expect, that you will

conscientiously and dispassionately consider and weigh the evidence and apply the law of the case, and that you will reach a just verdict regardless of what the consequences of such a verdict may be. That verdict, obviously, must express the individual opinion of each juror.

"Any comment that the Court or counsel may make upon the evidence or any deductions they may draw therefrom is not in any way binding upon you and should not be accepted by you unless it coincides with your own recollection and construction of the evidence.

"I am going to read for you now the pertinent parts of the indictment which has been filed in this case:

"'The Grand Jury charges:

"'Between September 4, 1953 and October 27, 1953, inclusive, in the City of Minneapolis, County of Hennepin, State and District of Minnesota, one A. Ray Segal did corruptly, wilfully, wrongfully, unlawfully and knowingly suborn, instigate, and procure one Mary K. Johnson, to commit perjury when she was a witness, who had duly taken an oath that she would testify truly before a competent tribunal, to-wit, the United States District Court for the District of Minnesota, Fourth Division, Minneapolis, Minnesota, in the consolidated cases that were on for trial and were entitled United States of America, Plaintiff, versus Robert Bannarn, alias Robert Barnarn, Donald Nelson, Defendants, Criminal No. 8416, and United States of America, Plaintiff, versus Donald Nelson, Defendant, Criminal No. 8445, the said District Court being authorized under the laws of the United States to administer an oath; and said defendant, A. Ray Segal, an attorney at law, and one of the attorneys who defended Donald Nelson, the only defendant who stood trial in the above cases in Criminal Nos. 8416 and 8445, did, then and there, corruptly, unlawfully, wilfully, wrongfully and knowingly suborn, instigate and procure said witness, Mary K. Johnson, to wilfully, wrongfully,

unlawfully, knowingly, falsely, and contrary to such oath, testify that:'

"Then there is recited in the indictment in colloquies between the witness Mary K. Johnson and the prosecuting attorney, Alex Dim, and one of the defense attorneys, Mr. Wasserman, and I will read for you the pertinent parts of these colloquies, those questions and answers. This first series of questions and answers deals with Mary K. Johnson's conduct in connection with prostitution in the City of Chicago. These questions are by Mr. Dim, the answers are by Mary K. Johnson. I now read them.

"'Q Did you hustle in Chicago then?

A No, I don't believe I did. I worked at Spiegel's Department Store when I first got there.

Q Did you hustle in Chicago since that time you made this trip?

A I worked at Spiegel's for quite some time.

Q How long did you work at Spiegel's?

A I don't remember exactly, but it was for awhile and I was not hustling.

Q For awhile—you got to Chicago November 11th, let us say.

A Yes.

Q 1952. Were you working at Spiegel's in the Christmas rush?

A Yes.

Q I only brought up that December 31st so I could help you on these dates. You got there on November 11th. You worked at Spiegel's. Did you hustle in between November 11th and December 31st?

A No, sir.

Q No, sir?

A No.'

"The next series of questions deals with the question of whether or not Mary K. Johnson was a user or an addict of

drugs. I now read those questions. These are also by Mr. Dim, the Assistant United States Attorney.

"'Q Now, what did you earn a week at Spiegel's from November 11th or thereabouts?

A I believe I made $45.00 a week.

Q And what did you need a day in money in order to live?

A You mean as far as being an addict or just to live?

Q Both.

A I was not an addict at that time. I was not addicted. I was not using—

Q And from November, November 11th until December 31st you were not using?

A No.'

"The next series of questions and answers deals with Mary K. Johnson's association with Bobby Bannarn in Chicago, questions and answers:

"'Q And you got to Chicago about November 11, 1952, and did you see Bobby?

A No, I didn't see him for a long time after t at. I didn't know where he was. He was not renting th same place I was.

"'Q And then from November 11, 1952, until what time did you see him or hear from him again?

A I think it was a little over a month I had not seen him at all.

Q Then you saw him for the first time?

A That is right.

Q Where?

A Gee, I don't know.

Q Chicago?

A Yes, it was in Chicago.'

"The next series of questions deals with crossing the state line.

"'Q Did you do anything with reference to—before you crossed the state line?

A I don't really know if we ever did cross the state line. I wasn't watching and I don't know where the state line was, but I thought this car was following us and I told Don to slow down a little bit, but the car had disappeared so it hadn't made any difference. As far as the state line was concerned I have no idea. I wasn't watching. I don't remember signs along the road or anything. I don't know even if we got across it.'

"And that finishes the questions and answers that are pertinent as between Alex Dim, the Assistant United States Attorney, and the witness Mary K. Johnson.

"Now, the next series of questions and answers that are in the indictment are questions that were asked by Mr. Wasserman, one of the defense attorneys, and the witness Mary K. Johnson.

" 'Q Miss Johnson, you did not go down to Chicago for any purpose of prostitution, did you? That was not your purpose when you went to Chicago?

A Not when I left, no.

Q So at the time that you left Minneapolis you had no intention to engage in prostitution?

A That is correct. I was not thinking about it.

Q And you had no intent to engage in any immoral acts either, did you? You know what immoral activities are, anything wrong?

A Well, I didn't know what I might do, except I hadn't planned on it.

Q You had planned to go to Chicago to get a job, isn't that true?

A I was going to go there and work, yes.

Q And I believe you said you planned to go to Chicago to get away from someone?

A That is right.

Q And other than those plans, to get a job and to get away from someone, you had no other purpose in going to Chicago. Isn't that correct?

A Yes. I had not planned on doing anything wrong.

Q And as a matter of fact when you got to Chicago you did get a job, did you not?

A That is right.

Q And that was for Spiegel's Department Store?

A Yes, sir.

Q And what was the nature of the work?

A I was the head of the ladies' ready-to-wear.

Q Is that a saleslady's job?

A Yes.

Q And the nature of your work was what?

A Sell clothing.

Q You sold dresses to customers, is that right?

A Yes.

Q And that was a full-time job?

A Yes.

Q It was a daytime job. What time did you start work in the morning?

A When they opened. I don't remember. I think they opened at 9 and I worked from 9 until, I think, 5:30.

Q A daily job from 9 to 5:30.

A That is right.

Q And you got paid every week?

A Yes.

Q And for how long a period of time did you stay with Spiegel's?

A I don't remember exactly. I don't remember how long it was.

Q It was for at least a month, was it not?

A It might have been less than a month, but it was a period of time. I mean I did get some pay checks.

Q Did you get paid every week in checks?

A Yes.

Q By Spiegel's?

A Yes.

Q And would you say you got at least three weekly checks?

A I don't remember because I didn't pick up my last check. I was supposed to go back and pick it up and for some reason I never went back and got it.

Q There were at least three checks due you, is that correct?

A I believe so.

Q Possibly more?

A It might have been.

Q But no less?

A No.'

"And that ends the questions and answers as set out in the indictment.

"Now, the indictment continues as follows:

" 'That on the contrary it was the truth, and that said Mary K. Johnson then and there knew it to be the truth; and said A. Ray Segal, the defendant, at the time, then and there knew that said Mary K. Johnson was suborned, instigated and procured to testify falsely aforesaid, said A. Ray Segal then and there knew it to be the truth:

" 'That said Mary K. Johnson did engage in prostitution between November 11, 1952 and December 31, 1952 in Chicago, Illinois.

" 'That said Mary K. Johnson did, between November 11, 1952 and December 31, 1952, use drugs as an addict in Chicago, Illinois.

" 'That Donald Nelson did procure a "trick" for Mary K. Johnson.

" 'That Donald Nelson knew Mary K. Johnson was a prostitute.

" 'That Mary K. Johnson did see Bobby Bannarn about November 11, 1952 in Chicago, Illinois.

" 'That Mary K. Johnson did know she did cross the state line.

"'That Mary K. Johnson did know that one of the purposes of the trip was for her to engage in prostitution in Chicago, Illinois.

"'That said testimony was material in the trials heretofore mentioned in the United States District Court, Criminal Nos. 8416 and 8445, and that said Mary K. Johnson well knew such testimony to be false, and said A. Ray Segal, the defendant herein, well knew that said testimony of Mary K. Johnson was false and that he, said A. Ray Segal, the defendant herein, corruptly, unlawfully, wilfully, wrongfully and knowingly did suborn, instigate and procure said witness, Mary K. Johnson, to give said false testimony contrary to her oath.'

"That's the end of the reading of the indictment. It's signed by the foreman of the Grand Jury.

"Now, that testimony was allegedly given during the so-called Nelson cases, and I should advise you that, of the two defendants, Nelson stood trial. He was convicted by the jury. The jury returned a verdict of guilty. That verdict of guilty was set aside by the trial court for the reason that he felt that there was not evidence beyond a reasonable doubt to feel that the defendant was guilty. The other defendant, Bannarn, pled guilty and he was sentenced.

"Now, this defendant, Segal, is charged only with the crime that is set out in the indictment, and that is to say, subornation of perjury. He is not charged with any other crime, and you should not consider or speculate upon the matter of whether or not he has committed some other crime. You should concern yourselves exclusively with the question of whether or not the evidence convinces you beyond a reasonable doubt that the defendant has committed the crime of subornation of perjury as set out in the indictment.

"Now, the fact that this defendant has been charged with a commission of a crime does not constitute any evidence of his guilt or does it give rise to any presumption of guilt.

Under the law, every defendant who is charged with a crime is presumed to be innocent and that presumption of innocence remains with him throughout the entire trial until such time, if that time is ever reached, that the Government has proven him guilty beyond a reasonable doubt.

"The burden of proof rests upon the Government to prove the defendant's guilt beyond a reasonable doubt. I do not think that the term 'reasonable doubt' is so complex as to require any particular definition. The term explains itself. This does not mean that it is encumbent upon the Government to prove the defendant's guilt to a mathematical certainty or beyond the peradventure of doubt. It means that if after a full and fair consideration of all of the testimony and evidence you have an abiding conviction amounting to a moral certainty of the defendant's guilt, then you may say to yourselves that you have been convinced beyond a reasonable doubt.

"If the evidence is evenly balanced on the issue of whether or not A. Ray Segal knowingly induced Mary K. Johnson to testify falsely, that is, if it is just as consistent with innocence as with guilt, then, of course, the Government has not sustained the burden of proof and in such event you should return a verdict of not guilty. If, however, the Government has proved beyond a reasonable doubt that the defendant is guilty of the crime charged then your verdict should be one of guilty.

"You have heard evidence from time to time in the course of this trial to the effect that this defendant A. Ray Segal was previously tried in March, 1956, under this same indictment. You are instructed that you need not concern yourselves with the verdict that was reached in that trial or what disposition was made of that case. You are to be concerned solely with the question of whether or not the evidence presented here in this trial convinces you beyond a reasonable doubt of the guilt of the defendant.

"I am going to tell you now about the law that is involved, and I am going to read for you the pertinent parts of the Statute of the United States which deal with the subject of perjury and subornation of perjury. Here are the pertinent parts of the subornation of perjury statute.

"'Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be punished accordingly.'

Here is a statute which deals with perjury insofar as it is pertinent:

"'Whoever, having taken an oath before a competent tribunal, in any case in which a law of the United States authorizes an oath to be administered, that he will testify truly, willfully and contrary to such oath states any material matter which he does not believe to be true, is guilty of perjury and shall be punished accordingly.'

"In the event you should find a verdict of guilty you need not concern yourselves with the matter of punishment. I have not recited for you the punishment. That is set out in the statutes. The matter of punishment is solely within the province of the Court.

"I instruct you that the questions and answers set forth in the indictment which I have read to you were material to the issues in the Donald Nelson cases as alleged in the indictment herein. This having been so determined you need not concern yourselves further with any questions of the materiality of those questions and answers.

"You are instructed that Chell M. Smith, who was the gray-haired gentleman that testified here the first day of the trial, I think, Clerk of the United States District Court, had the power to administer the oath to Mary K. Johnson who testified as a witness in the Nelson cases. You are further instructed that the United States District Court, District of Minnesota, Fourth Division, sitting as a trial

court in the Donald Nelson cases was a competent tribunal in which the law of the United States authorizes an oath to be administered.

"You are instructed that the fact that Mary K. Johnson has admitted that she had committed perjury in giving false testimony in the Donald Nelson cases is no defense to this defendant as she is not to be considered as an accomplice to the crime of subornation of perjury. The fact that she has been a prostitute and narcotic addict or at least narcotic user is no defense to this defendant. However, you are instructed that you should receive the testimony of Mary K. Johnson with care and caution.

"Now, in order to find the defendant, A. Ray Segal, guilty of the crime charged herein, you must find beyond a reasonable doubt from the evidence in this case that the testimony referred to of Mary K. Johnson given by her under oath in the Nelson cases was false and was known by her to be false. You must further find beyond a reasonable doubt from the evidence in these cases that the defendant, A. Ray Segal, knew that the testimony that Mary K. Johnson was about to give in the Nelson cases would be false, and that he knowingly and intentionally procured said Mary K. Johnson as a witness in said Nelson cases to give false testimony corruptly with the knowledge and belief on his part that said testimony was false. In other words, members of the jury, the essential elements making up the offenses are as follows:

"1. You must find beyond a reasonable doubt that the testimony of Mary K. Johnson was false.

"2. Her testimony must be given wilfully and corruptly, knowing it to be false.

"3. You must find beyond a reasonable doubt from the evidence in this case that the defendant, A. Ray Segal, knew or believed that the testimony of Mary K. Johnson given, and about to be given, would be false.

"4. You must find beyond a reasonable doubt from the evidence in this case that the defendant, A. Ray Segal, knew that the witness under oath, said Mary K. Johnson, would wilfully and corruptly testify to facts which the defendant, A. Ray Segal, knew to be false, and that A. Ray Segal suborned the commission of such perjury by Mary K. Johnson.

"You are instructed that one of the essential elements of the crime of subornation of perjury is that perjury has been committed. A deliberate, material falsification under oath constitutes the crime of perjury. In considering whether the evidence is proved to your satisfaction beyond a reasonable doubt that the answers herein alleged to have been made were false, a determination of such falsity must be based upon the type of proof that the law requires in cases of this kind. The testimony of Mary K. Johnson that you heard in this case that she had given false testimony as set forth in the indictment while a witness in the Donald Nelson cases is not sufficient evidence by itself to prove such falsity. Such single witness' testimony must be corroborated either by another witness or by strong corroborating circumstances. In other words, members of the jury, before you may find the defendant guilty of subornation of perjury there must be evidence to prove beyond a reasonable doubt that the testimony of Mary K. Johnson in the Nelson cases was perjured and such evidence must come from two witnesses or one witness plus corroborating circumstances.

"Now, one witness, Mary K. Johnson, has testified here that she gave false testimony as a witness in the trial of the Nelson cases with respect to the questions and answers to which I have previously referred. In considering whether or not the requirement of corroboration has been met, you may consider the testimony of other witnesses insofar as it bears upon the truth or falsity of such testimony and such facts and circumstances, if any there be, which tend to throw light on the truth or falsity of such testimony and such

admissions by word or act, if any, as you may find to have been made on these matters by the defendant, Segal himself.

"As to all such evidence of corroboration you the jury are to be the sole judges of its worth and its weight.

"What I have just stated to you, members of the jury, was the Rule of Evidence which the Government was obliged to follow in order to prove that perjury had been in fact committed. Now, if you find that perjury has been in fact committed within the rule I just quoted to you, then you have the question of deciding whether or not the defendant, A. Ray Segal, induced and procured Mary K. Johnson to give perjured testimony. In order to find the defendant guilty you must find such by proof beyond a reasonable doubt.

"The Government has introduced evidence on this trial bearing on the matter of whether the defendant, A. Ray Segal, attempted to impede the appearance of Rebecca Aron at a previous trial of this same case or the giving of testimony by her at such previous trial.

"Such evidence may be considered by you, and given such weight as you determine it to be entitled to receive, as bearing on the issue of the defendant's guilt or innocence for which he is now being tried.

"The jury will weigh and access such evidence by the rules and according to the tests which I have given you to be applied to the evidence generally and should be considered by you with all of the other evidence in the case.

"There has been evidence in this case as to the character of the defendant, A. Ray Segal. Such evidence is regarded by the law as relevant to the question of whether defendant is innocent or guilty of the crime charged, because the jury may, if its judgment so directs, reason that it is improbable that a person of good character in such respects would have conducted himself as alleged. Character evidence of itself may be sufficient to raise a reasonable doubt whether or not

defendant is guilty, which doubt otherwise would not exist. Hence, you may consider such evidence in connection with all other evidence in the case.

"But if, after weighing all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty of the crime charged against him in the indictment, your duty will be to find him guilty of that offense, notwithstanding the testimony that he was or is a person of good character.

"The Court instructs the jury further in the course of this case the defendant called so-called character witnesses who testified as to the reputation of the defendant in the community. Since the defendant tendered the issue of his reputation, the prosecution was permitted to ask the character witnesses if they had heard about various incidents in his career. I caution you regardless of the answers that were made to those inquiries by the prosecution, that you are not to assume that the incidents asked about actually took place. All that is involved here is that the particular witness' knowledge and standard of opinion as to the reputation of the defendant in the community was being tested. There is no proof in this case and none could be produced legally before you within the rules of evidence as to the actual happening of those incidents about which the prosecution was permitted to inquire. Accordingly, you are not to hold any of those incidents so inquired about against this defendant nor are you to assume or consider that they may have occurred. Drive those matters from your minds insofar as the defendant is concerned and take them into consideration only in weighing and considering the worth and value of the evidence of the character witnesses as to whether it truly reflects the community's real opinion as to the character of the defendant.

"You members of the jury are the sole and exclusive judges of the effect and value of evidence addressed to you and of the credibility of the witnesses who have testified in this case. The character of the witnesses as shown by the evi-

dence should be taken into consideration for the purpose of determining their credibility, and that means their believability, whether or not they have spoken the truth. The jury may scrutinize the manner of witnesses while on the stand and may consider their relation to the case, if any, and also their degree of intelligence. A witness is presumed to speak the truth. This presumption, however, may be repealed by the manner in which he testifies, his interest in the case, if any, or his bias or prejudice, if any, against one of any of the parties by the character of his testimony or by evidence affecting his character for truth, honesty or integrity or by contradictory evidence. A witness may be impeached also by evidence that at other times he has made statements inconsistent with his present testimony as to any matter material to the cause and trial. And a witness may be impeached also by proof that he has been convicted of a felony.

"A witness wilfully false in one material part of his or her testimony is to be distrusted as to others. The jury may reject the whole of the testimony of a witness who has wilfully sworn falsely to a material point. If you are convinced that a witness has stated what was untrue as to a material point, not as a result of mistake or inadvertence, but wilfully and with a design to deceive, then you may treat all of his or her testimony with distrust and suspicion and reject all unless you shall be convinced that he or she has in other particulars sworn to the truth.

"Insofar as the testimony of prostitutes or drug addicts or persons convicted of crime is concerned, you are advised that such testimony is competent for you to consider, but I admonish you to accept it with care and caution.

"And now, members of the jury, here is a short summary of the situation which may bring it all to a head for you. The defendant, A. Ray Segal, is charged with having procured Mary K. Johnson to give false testimony in the Donald Nelson cases as set forth in the indictment. If you find beyond

a reasonable doubt from the evidence in this case that any one or more or all of such answers were false and that defendant wilfully and intentionally procured Mary K. Johnson to give such corrupt testimony under oath, you should find the defendant guilty. If you do not so find you should find him not guilty.

"If during this trial I have said or done anything which has suggested to you that I am inclined to favor the plaintiff or the positions of either the Government or the defendant, you will not permit yourselves to be influenced by any such suggestion. I have not expressed nor intended to express any opinion as to what witnesses are or are not worthy of belief, or what inferences should be drawn from the evidence. If any expression of mine has seemed to indicate an opinion relating to any of these matters I instruct you to disregard it.

"I have refrained from commenting on the evidence in this case. Counsel have done that very fully and very well. You are to determine the facts from your recollection of the testimony. You are not to indulge in speculation or conjecture on any of these questions involved. And as I have previously observed, you must not base your verdict upon considerations of sympathy or prejudice or upon anything except the evidence which has been received here in court and the fair and just inferences to be drawn therefrom.

"When you go to your jury room you will be given a blank form of verdict, and just the one form which reads as follows:

"'United States of America, plaintiff, against A. Ray Segal, defendant.

"'We the jury in the above-entitled action do find the defendant .....,' you are to insert in there guilty or not guilty as you find. There is a place for the foreman or the forelady of your jury to sign and a place to date it, and today is October 24th.

"When you get to your jury room your first obligation will be to choose one of your number as a foreman or a forelady, and that person will preside over your deliberations. After you have reached a verdict you will fill in your form of verdict on this form of verdict, cause your foreman or forelady to sign it and to date it, advise the officer who will be in charge of you, and he will bring you back to this room. Your verdict must be unanimous, that is to say all of you must agree upon that verdict. The exhibits will go with you to the jury room.

"Now, members of the jury, when you were chosen on this case you were interrogated as to your background and previous knowledge, if any, of it. After that interrogation you said that you would be fair and impartial jurors. I have every reason to expect, and counsel on both sides have every reason to expect and appreciate now that you will be fair and impartial jurors. This is a very important case. It's important from the viewpoint of the Government. It's important from the viewpoint of this defendant. It is deserving of your best, honest consideration, and I have every confidence that you will give it that consideration.

"Counsel may call to the attention of the Court any corrections or make any objections. I may say for the record that the objections which have previously been made in Chambers may be considered to be repeated at this time and they need not be made again, but if there are additional objections or omissions you may come to the Bench."

(The following proceedings were at the Bench out of the hearing of the jury.)

"Mr. Hammond: May I call the Court's attention to one or two phases. When the Court read the indictment to the jury the Court omitted reference to the charge in the indictment that Donald Nelson knew that Mary K. was a prostitute. In the latter part of the indictment the Court read that a charge, that was omitted in the indictment, to wit, that

Donald Nelson procured a trick for Mary K. I think you inadvertently stated that to the jury and that is not one of the charges that has been corroborated.

"The Court: That's No. 5?

Mr. Ryan: Both of them, actually two that the Court referred to that are not in issue in this matter.

The Court: Donald Nelson knew Mary K. Johnson was a prostitute?

Mr. Hammond: One, and procured a trick for Mary K., somewhere in there I heard you read it. I don't know where that came in.

The Court: I did. I read it.

Mr. Janes: I wonder if the Court might not state that you read that, that whether they find that true or false—that wouldn't work. I am sorry. I will strike that.

The Court: You think that is material? You think it makes—

Mr. Hammond: I don't know. I am just calling your attention to it at this time, there is a question whether we want anything said any further about it because I don't know that there is any evidence here. We never argued it and it may do more harm at this time to again rehash it over. What do you think, Dick? It's kind of a touchy thing.

Mr. Ryan: Much the same. I think I would leave it go. I don't think it's very material.

Mr. Hammond: I was wondering in your summary, Your Honor, in your summary you say that if you find beyond a reasonable doubt that she testified falsely, and that he procured her to testify falsely then you can find him guilty. Now, he must, one of the essential elements that you read to the jury was that, 3, that he must know that her testimony

was false, and then he must procure her to give it. Now, I was wondering in your summary whether you completely gave the essentials in the summary?

The Court: Well, we discussed this. This is Government's Request No. 15, and we discussed it in Chambers. I don't recall there was any objection to it, was there? I read it.

Mr. Hammond: If we overlooked it in Chambers we certainly want to call the Court's attention to it now that it isn't, it hasn't given the essential elements of the charge, that is, certainly he must know that she is going to testify to some false matters. I mean that he must know it's perjury before he, and then procured her to do it. She may give false testimony, and he may put her on the stand and she gives it, but unless he knows in advance that it's perjury he wouldn't be liable.

The Court: Well—

Mr. Janes: I have a suggestion in that regard. The Court probably has a general instruction that he uses in regard to intention and how you prove intention, and the Court could state that you are giving this instruction because in the offense of subornation; the alleged perjurer, or must have intended to give perjured testimony and for there to be subornation of perjury the alleged suborner must have intended that there be perjury, and I think that might make a rather smooth instruction and wouldn't point it one way or another.

The Court: Well, how would it be if I just emphasize to them that before they can find the defendant guilty, one of the essential elements is that the defendant, Segal, knew that the testimony she was to give was false?

Mr. Hammond: Must know that it's false, sure.

The Court: How would it be if I just emphasize that?

Mr. Janes: He knew or believed it to be false, either knew or believed.

(The following proceedings were in open court.)

"The Court: In order that there may be no misunderstanding about the law which is applicable to this case I instruct you, members of the jury, that before you can find the defendant guilty you must find beyond a reasonable doubt that the defendant, Segal, knew or believed that the testimony which Mary K. Johnson was to give or did give was false.

Madam Clerk, will you please swear a jury officer or officers.

(Whereupon two jury officers were sworn.)

"Mr. Hammond: Don't forget the alternate, Your Honor.

The Court: I suppose you have been wondering what's been going on, Mrs. Galka. I just want to thank you for your service. I am going to excuse you now.

"We have twelve jurors that are able to serve and when the jurors go to their room if you will just go about your own business. I suggest to you that probably it wouldn't be wise for you to visit with anybody about what you might have decided or what your ideas are about it at least until the members of the jury themselves return with their verdict; and you are to report back here, Mrs. Galka, tomorrow morning at 10 o'clock to Judge Nordbye. Thank you for your service, abortive though it may be.

"Members of the jury, if you will go with the jury officers and thank you, Mr. Hammond, for telling me about that juror."

"(Whereupon the jury retired at 10:15 A.M., October 24, 1956, and they returned with their verdict at 3:15 P.M., October 24, 1956, at which time the jurors were polled and all had agreed upon the verdict.)"

"We certify the foregoing record of 821 pages of testimony commencing October 15, 1956, and ending October 22, 1956, and the foregoing jury charge contained in this volume of transcript is a complete transcript of the proceedings had in the above-entitled matter on the dates therein shown.

EARL G. ANDERSON
Official Reporter
FRANK A. MASSEY
Official Reporter"

(Caption)

VERDICT

We, the jury in the above-entitled action, do find the defendant Guilty.

RALPH STAHLKE
Foreman

Dated: October 24, 1956

Endorsed: Filed Oct. 24, 1956, Chell M. Smith, Clerk, by Gladys A. M. Rippe, Deputy.

(Caption)

MOTION FOR JUDGMENT OF ACQUITTAL

Defendant, A. Ray Segal, respectfully moves the Court, that having moved the Court for judgment of acquittal at the close of the Government's case and at the close of all the evidence in the case, does hereby renew said motions.

Said motion is based upon the ground that the defendant, A. Ray Segal, was entitled to judgment of acquittal in his favor. At the time he moved for the same at the completion of the Government's case and at the close of all the evidence in the case and upon each and all of the grounds assigned

therefore at the time of making said motion, said grounds being, among other grounds then contended as follows:

I.

That it conclusively appears from the evidence in the record that there was no evidence, and certainly no substantial evidence, that warranted the jury in finding that the defendant was guilty beyond a reasonable doubt of suborning perjury given by one, Mary Kay Johnson Loveless, as charged in the indictment and as submitted to the jury by the court in its instruction.

LINUS J. HAMMOND
RICHARD B. RYAN
Attorneys for Defendant
Minnesota Building
St. Paul, Minnesota

(Filed October 27, 1956.)

(Caption)

MOTION FOR NEW TRIAL

The defendant in the above-entitled action respectfully moves the Court to vacate and set aside the verdict returned herein against the defendant and to grant to the defendant a new trial in this action upon each and all of the following grounds:

1. That the evidence is not sufficient to sustain the verdict against the defendant.

2. That there is no substantial evidence of subornation of perjury on the part of the defendant.

3. That the verdict is against the manifest weight of the evidence.

4. That the verdict is contrary to the weight of the evidence.

5. Errors of law occurring at the trial in the rulings on evidence to which either objections were taken or it was made known to the Court the action which the defendant desired the Court to take; or defendant's objection to the action of the Court and its grounds therefore were made known to the Court and the defendant did not have an opportunity to object to a ruling or order at the time it was made.

6. That the verdict of the jury was contrary to law.

7. That the verdict of the jury was not supported and justified by the evidence.

8. That the verdict of the jury seems to have been made under the influence of passion and prejudice.

9. That the Court erred in not holding as a matter of law and not instructing the jury as a matter of law, that the defendant was not guilty of suborning perjury as charged in said indictment.

10. That the Court erred in failing to instruct the jury in the words and in the form requested by the defendant, to which exception was taken and which instructions are made a part hereof by reference.

11. The Court erred in receiving in evidence over objection of the defendant and in permitting the same to be taken to the jury room by the jury in its deliberations of the case. Government's exhibits 3, 4, and 5 being certified copies of Docket Entries of the Clerk of the District Court in Criminal Cases 8416 and 8445 and which certified copies had attached to them a memorandum opinion of Judge Gunnar H. Nordbye commenting on the evidence in the case of United States vs. Donald Nelson, and the conclusions he had reached from the evidence adduced in that trial and his reasons for granting motion for judgment of acquittal in favor of Donald Nelson in that case.

12. The Court erred in receiving in evidence over objections of defendant and in permitting the same to be taken to the jury room by the jury in its deliberations of the case. Government's exhibit 6; being an information filed in this court against one Godfrey Lee Barrett charging him, Godfrey Lee Barrett, with transporting one, Shelly Warren, in interstate commerce for purposes of prostitution.

13. The Court erred in receiving in evidence over the objections of defendant, and in permitting the jury to take the same to its jury room in its deliberations of the case, Government's exhibit 7, being a stenographic transcript of the testimony of one, Mary Kay Johnson-Loveless, of her testimony in the case of United States vs. Donald Nelson.

14. The Court erred in receiving in evidence over the objections of defendants the testimony of one, Shelly Warren, of her claimed associations and travels with one, Godfrey Lee Barrett, and of her arrests, prosecutions and convictions of crimes and misbehaviors prior and subsequent to the time of the alleged offense charged against defendant, and permitting the witness, Shelly Warren, to testify over objections by defendant to a claimed conversation she had with defendant in August of 1955.

The court erred in denying the defendant's motion to strike such testimony and in denying defendant's motion for a mistrial by reason thereof.

15. The Court erred in receiving in evidence over objection of defendant the testimony of one "Lovie Barrett" regarding the case of United States vs. Godfrey Lee Barrett and the Court erred in failing to strike such testimony and to grant a mistrial on the motion of the defendant.

16. The Court erred in receiving in evidence over objections of the defendant, claimed telephone calls received by one, Becky Aron, from claimed unknown persons, and the Court further erred in receiving in evidence claimed telephone conversations between one, Herbert Doering and de-

fendant; claimed telephone conversations between one, Mrs. Herbert Doering and defendant, and claimed telephone conversations between one, Robert Whitchurch, and defendant; claimed phone conversations between Mr. Sidney Gislason and defendant; and claimed overhearing of conversation by Robert Whitchurch of a telephone conversation between Herbert Doering and defendant, all of which was claimed to have concurred in March of 1956.

17. The Court erred in receiving in evidence and permitting the United States attorney to cross-examine defendant over the objections of defendant regarding the general subject of ownership of 707 Bradford Street Northeast, Minneapolis, and showing to the defendant the original income tax returns of the defendant for the years 1950, 1951, 1952, and 1953 and permitting the United States attorney to ask the defendant to examine his income tax returns for those years and tell the jury whether he included any income for that property for the years 1950, 1951, 1952, and 1953.

18. The Court erred in receiving in evidence and permitting the United States attorney to cross-examine a number of the character witnesses produced by the defendant over the objections of the defendant, by asking a number of said character witnesses whether they had heard of a certain lawsuit in the Municipal Court of Minneapolis, Minnesota, in the year 1945 entitled Max Hermann vs. St. Denis, and permitting the United States attorney to, in great detail, relate to the said character witnesses what purported to be his understandings and deductions of what the evidence was in said case and the part that the defendant was supposed to have taken in the case and the eventual disposition of the case.

That the Court further erred in giving to the jury a "cautionary" instruction on how the jury was to receive that kind of evidence.

19. The Court erred in informing the jury in his instructions, over the objections of the defendant, that in the case

of United States vs. Donald Nelson the jury returned a verdict of guilty against the defendant, Donald Nelson, but the Court, by Judge Gunnar H. Nordbye, vacated and set aside the verdict of the jury and found the defendant, Donald Nelson, not guilty by reason of insufficiency of evidence to convict.

20. The Court erred in giving Government's Requested Instruction No. 6 over objections from the defendant which reads as follows:

> You are instructed that the fact that Mary K. Johnson has admitted that she had committed perjury in giving false testimony in the cases of United States v. Donald Nelson, Criminal Nos. 8416 and 8445, is no defense to this defendant, as she is not to be considered as an accomplice to the crime of subornation of perjury. The fact that she has been a prostitute and narcotic addict is no defense to this defendant. However, you are instructed that you should receive her testimony with care and caution.

21. The court erred in giving Government's Requested Instruction No. 8-A over objections from the defendant which reads as follows:

> We suggest that Government's Request No. 8 as modified, have inserted therein at the end of its first paragraph the following:
>
> One witness, Mary K. Johnson, has testified here that she gave false testimony as a witness on the trial of the Nelson cases with respect to the questions and answers to which I have previously referred. In considering whether or not the requirement of corroboration has been met you may consider the testimony of other witnesses insofar as it bears upon the truth or falsity of such testimony and such facts and circumstances, if any there be, which tend to throw light on the truth or falsity of such testimony and such admis-

sions by word or act, if any, as you may find to have been made on those matters by the defendant, Segal himself.

As to all such evidence of corroboration you the jury are to be the sole judges of its worth and weight.

22. The Court erred in giving Government's Requested Instruction No. 9 over objections of the defendant which reads as follows:

The Government has introduced evidence on this trial bearing in the matter of whether the defendant, A. Ray Segal, attempted to impede the appearance of Rebecca Aron at a previous trial of this same case or the giving of testimony by her at such previous trial.

Such evidence may be considered by you and given such weight as you the jury determine it to be entitled as bearing on the issue of the defendant's guilt or innocence for which he is now being tried.

You the jury will weigh and assess such evidence by the rules and according to the tests which I have given you to be applied to the evidence generally and should be considered by you with all the other evidence in the case.

Said motion is based upon all the files and records herein, including the minutes of the Court and the evidence taken at the trial hereof, and all exhibits herein, and is made pursuant to Rule 29 of the Rules of Criminal Procedure for the District Courts of the United States.

LINUS J. HAMMOND
RICHARD B. RYAN
Attorneys for Defendant
Minnesota Building
St. Paul, Minnesota

(Filed October 27, 1956.)

(Caption)

MEMORANDUM AND ORDER DENYING DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL AND FOR A NEW TRIAL

The defendant was found guilty, by a jury, of subornation of perjury, 18 U.S.C.A. 1622, and has made timely motions for judgment of acquittal and a new trial.

Extensive oral argument was had and voluminous briefs have been filed.

I am satisfied that the evidence here amply supports the verdict. The evidence and inferences to be drawn from it must be viewed in a light most favorable to the prosecution. Rule 29, F.R.C.P., Barron, Federal Practice and Procedure, Sec. 2221, et seq. and cases cited. The motion for acquittal is denied.

The motion for a new trial is based on several grounds. The Court has considered all of the grounds urged. One of them is deserving of comment.

The defendant assigns error in the admission of evidence concerning the so-called "Doering-Aron matters." One Rebecca Aron testified at the trial on behalf of the government. She is an admitted former prostitute. Her testimony tended to support and corroborate the testimony of the government's chief witness, Mary K. Johnson (Loveless), that she, Johnson, lied and was suborned to do so by the defendant in the white slave prosecution of one Donald Nelson in October, 1953.

The Court admitted evidence, over the objection of defendant, that was designed to show that the defendant Segal had made attempts to persuade Rebecca Aron to leave town just prior to the first trial of this case in March, 1956. Aron testified that she had received phone calls "concerning my leaving town, receiving some money to leave town or something." The government, of course, had the onus of proving

that the calls emanated from Segal or his representative. From the evidence produced to connect Segal with these phone calls, the jury was clearly warranted in finding the following facts, related herein in narrative.

Aron, a colored prostitute, had been maintaining a clandestine relationship for about two years with one Herb Doering, an insurance company representative from New Ulm, Minnesota. Doering is married and has a family. Periodically, he had given Aron money and gifts. Doering apparently had some influence upon Aron, and it was this influence that interfered with Segal's attempts to secure Aron's absence from his trial. To get Doering out of the way, Segal called Doering's wife in New Ulm and told her that he, Segal, had discovered that her husband was associating with a colored prostitute. Segal told her that Doering was interfering with Segal's efforts to get Rebecca Aron to leave town. The testimony of Doering himself, Mrs. Doering, Robert Whitchurch, Doering's business superior, and Sidney Gislason, a New Ulm lawyer to whom Mrs. Doering turned for advice on the matter, tended to establish that Segal was attempting to eliminate Aron as a witness against him and that to do so he was employing oppressive measures against Aron's illicit lover, Doering. The jury would be amply justified in drawing the necessary connection between the coercion of Herb Doering and the "anonymous" phone calls to Rebecca Aron.

The defendant contends that it was prejudicial error to admit this evidence. He states in his brief:

> "Under the provisions of Title 18 Section 1503 [U.S.C.A.] it is a felony to corruptly threaten a witness in any U. S. Court proceeding and we assume the Government was attempting to show that the defendant violated this section of the statute being an offense similar to the one charged in the Segal indictment, * * *, and that such evidence was admissible to show 'intent' of Segal or the crime he was charged with."

Defendant cites, as controlling, a line of cases including *Paris v. United States*, 8 Cir., 260 F. 529; *Gart v. United States*, 8 Cir., 294 F. 66; *Edwards v. United States*, 8 Cir., 18 F. 2d 402; *Fabacher v. United States*, 5 Cir., 20 F. 2d 736; and others. The issue involved in these cases was as to the admissibility of evidence of similar offenses to show an intent to commit the crime charged.

But, these cases are not controlling here for the evidence concerning the Doering-Aron matter was not admitted on the theory that there were similar offenses involved. Impeding a government witness is, of course, a crime, 18 U.S.C.A. 1503, and there is some similarity between that crime and the offense of subornation of perjury for which Segal was tried, but, this similarity is only a fortuitous circumstance in this case. Inducing a witness to leave town is merely another form of suppressing evidence. An attempt by a defendant to suppress evidence leads to the conclusion that the evidence would be unfavorable to him. This is evidence of guilt and, as such, relevant. This is the theory upon which it is admissible, and it is admissible regardless of the crime charged. See *DiCarlo v. United States*, 2 Cir., 6 F. 2d 364, 368.

In *Carnahan v. United States*, 8 Cir., 35 F. 2d 96, the crime charged was conspiracy to violate the National Prohibition Act. There was evidence that a co-conspirator DeMayo had sought an attorney to get a witness to leave the country. Because of factors immaterial here, the evidence was not admissible as against Carnahan, but it was held properly admitted as against DeMayo.

In *Vause v. United States*, 2 Cir., 53 F. 2d 346, 354, evidence of conversations by witnesses with the defendant in which the defendant had told the witnesses to remain silent about his connection with the crime was held admissible. The offense charged was fraudulent use of the mails.

Although the evidence received on the Doering Aron matter may have tended, incidentally, to show the commission

of a separate crime, it was not admitted for that purpose; it was clearly relevant and competent to prove the crime with which the defendant was charged. *Bram v. United States*, 8 Cir., 226 F. 2d 858, 863; *Hardy v. United States*, 8 Cir., 199 F. 2d 704, 707.

This defendant had a fair trial. He was ably represented by two highly competent and skilled attorneys with years of experience in the field of criminal law. Both of them are former prosecuting officers. They were vigorous and adept in the defense. The defendant is himself a lawyer, well versed and experienced, especially in the field of federal criminal law, and was able to be of great assistance in his own defense.

This is the second time a jury has found the defendant guilty. The first verdict, returned in March, 1956, was set aside by my colleague, Chief Judge Nordbye, solely " in the interest of justice," because of the unchallenged admission into evidence of irrelevant testimony pertaining to the relationship of defendant and a prostitute.

In the second trial, substantially the same evidence was introduced as was received in the first trial with the exception of the irrelevant evidence noted above. In addition, evidence of defendant's alleged attempt to impede the witness Aron, discussed previously, was received.

There is no indication of passion or prejudice practiced against the defendant. The jury, chosen without objection, represented a fair cross-section of the community. It was attentive throughout the trial. It was conscientious in the discharge of all of its duties. Its unanimous verdict was of guilt. This is a conclusion well supported by the evidence.

The Court believes the record to be absent of prejudicial error. There is no reason or occasion for a new trial.

The motions are denied.

EDWARD J. DEVITT
United States District Judge

January 24, 1957

(Filed January 24, 1957.)

(Caption)

JUDGMENT AND COMMITMENT

On this 28th day of January, 1957, came the attorney for the government and the defendant appeared in person and by counsel.

It Is Adjudged that the defendant has been convicted upon a verdict of guilty after trial by a jury of the offense of having corruptly, wilfully, wrongfully, unlawfully and knowingly suborned, instigated, and procured one Mary K. Johnson to commit perjury when she was a witness in violation of 18.U.S.C. Sec. 1622 as charged in the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of eighteen (18) months and pay a fine of Two Thousand ($2,000.00) Dollars.

It Is Adjudged that execution of sentence be stayed for a period of ten days (10) from this date.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Approved:
CLIFFORD JANES
Assistant U. S. Attorney

EDWARD J. DEVITT
United States District Judge
Frank A. Massey, Clerk
By Gladys A. M. Rippe
Deputy Clerk

Endorsed: Filed Jan. 28, 1957, Frank A. Massey, Clerk, by Gladys A. M. Rippe, Deputy.

(Caption)

NOTICE OF APPEAL

Name and Address of Appellant:

A. Ray Segal
2853 Glenhurst Avenue
Minneapolis, Minnesota

Names and Addresses of Appellant's Attorneys:

Linus J. Hammond, Esq.
330 Minnesota Building
St. Paul, Minnesota
Richard B. Ryan, Esq.
1008 Minnesota Building
St. Paul, Minnesota

Offense: Indictment charges, in substance, that defendant did, between the dates of September 4, 1953 and October 27, 1953, at Minneapolis, Minnesota, suborn and procure one Mary K. Johnson to commit perjury during the trial of a case, and in the

particulars therein specified. Verdict of guilty by jury. Motions by defendant for judgment of acquittal or for new trial denied by court on January 24, 1957. Judgment and sentence by court of 18 months confinement and $2,000.00 fine imposed on January 28, 1957.

Appellant is not confined and is on bail.

I, A. Ray Segal, the above Appellant, hereby appeal to the United States Court of Appeals for the Eighth Circuit from the above stated judgment and sentence.

Dated at Minneapolis, Minnesota, this 28th day of January, 1957.

A. RAY SEGAL
Appellant
LINUS J. HAMMOND, Esq.
RICHARD B. RYAN, Esq.
Attorneys for Appellant
Minnesota Building
St. Paul, Minnesota

Copy of this notice to be sent to
Honorable George MacKinnon
United States Attorney
Federal Courts Bldg.,
St. Paul, Minnesota
(Filed January 28, 1957.)

(Caption)

BOND ON APPEAL

Know All Men by These Presents:

That I, A. Ray Segal, on my personal recognizance, am held and firmly bound unto the United States of America in the full sum of One Thousand ($1,000.00) Dollars, to be paid to the United States of America, to which payment well

and truly to be made I do hereby bind myself, my heirs, executors and administrators, by these presents.

Sealed with my seal and dated this 31st day of January, 1957.

Whereas, at the September Term 1956 of the United States District Court for the District of Minnesota, Fourth Division, in a cause pending in said court between the United States of America, as plaintiff, and said A. Ray Segal, as defendant, a judgment and sentence was rendered against the said A. Ray Segal, and the said A. Ray Segal has appealed to the United States Court of Appeals for the Eighth Circuit to reverse the judgment and sentence in the aforesaid cause, and

Whereas, the conditions of the above obligations are as follows:

(1) The said A. Ray Segal shall appear either in person or by attorney in the United States Court of Appeals for the Eighth Circuit on such day or days as may be appointed for the hearing of said cause in said United States Court of Appeals and prosecute his said appeal and shall abide by and comply with all orders made by said United States Court of Appeals in said cause, and

(2) If the judgment and sentence appealed from are affirmed, or if said appeal is dismissed, the said A. Ray Segal shall surrender himself as said United States Court of Appeals shall direct in execution of the judgment and sentence entered under date of January 28, 1957, by said United States District Court in said cause.

(3) If the judgment and sentence appealed from is reversed, the said A. Ray Segal shall appear for trial in said United States District Court on such day or days as may be appointed for a retrial by said United States District Court and shall abide by and comply with all orders made by said United States District Court.

Now, if the foregoing conditions are complied with, then the above obligation is to be void, otherwise the above obligation is to remain in full force and effect.

A. RAY SEGAL

State of Minnesota
County of Hennepin—ss.

On this 31st day of January, 1957, before me personally appeared A. Ray Segal, to me known to be the person described in and who executed the foregoing bond, and acknowledged that he executed the same as his own free act and deed.

A. RAY SEGAL

The foregoing Bond is hereby approved this 28th day of January, 1957.

EDWARD J. DEVITT
United States District Judge

(Filed January 31, 1957.)

APPENDIX

(Attached to and a part of Government's Exhibits 3 and 4)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

No. 8416 Criminal

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT BANNARN, ALIAS ROBERT BARNARN, and DONALD NELSON,

Defendants.

No. 8445 Criminal

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DONALD NELSON,

Defendant.

Defendant Donald Nelson presented to this Court motions for acquittal at the close of all the testimony. The Court reserved its ruling thereon and submitted the matter to the jury. A verdict of guilty was returned on each of the two indictments. Defendant Nelson now renews his motions.

Mr. A. Ray Segal and Mr. Solomon Wasserman appeared on behalf of Donald Nelson in support of said motions; and

Mr. Alex Dim, Assistant United States Attorney, appeared in behalf of the United States of America in opposition thereto.

The Court at the close of the testimony entertained grave doubt as to sufficiency of the evidence, but concluded to submit to the jury the issues on both indictments. Further reflection on the testimony has not lessened the Court's doubt in this regard. Of course, where the evidence indicates that defendant cohabited with a prostitute and associated with persons of dissolute character, one may unwittingly permit suspicion and surmise to be considered as substantive evidence of guilt. I do not have much doubt that the evidence is sufficient to warrant a finding that Nelson knew that Mary Johnson was a prostitute before the arrangement was made for the Chicago trip. Moreover, it may be that circumstantial evidence would warrant a finding that Nelson may have suspected, at least, that Bannarn was living off Mary Johnson's earnings as a prostitute. But to find that the transportation to Chicago was designed by Nelson in convert with Bannarn to transport Mary Johnson to Chicago with an intent that she should pursue her activities as a prostitute there, while entirely within the realm of reasonable suspicion, is not established by the evidence beyond a reasonable doubt. Mary Johnson denies she intended to continue her work as a prostitute when the trip was arranged. The testimony is undisputed that when she arrived at Chicago, she obtained legitimate work as a saleswoman and that she continued in this work for at least some weeks. It is entirely consistent with the evidence to find that the primary object of the trip to Chicago was because Bannarn had received a so-called "floater" and was required to leave Minneapolis. It is entirely possible that Mary Johnson, before leaving Minneapolis, may have planned to ply her trade in Chicago at some time in the future, but there is no evidence that this was her immediate plan. True, Nelson may have had reasonable ground for assuming that one who had been active as a prostitute and living with a man like

Bannarn probably would renew her activities as a prostitute sooner or later, wherever she might go. But to hold on this evidence that he rented the car to Bannarn with the intention of aiding and assisting Mary Johnson to go from Minneapolis in interstate commerce to Chicago with the knowledge and intent and purpose that she should go there in order to carry on her work as a prostitute is entirely a matter of surmise and speculation. Even prostitutes sometimes carry on legitimate activities, at least for a time. And the evidence is undisputed that Mary Johnson did that when she arrived at Chicago. The fact she did resume her work as a prostitute after January 1, 1953, does not justify a finding that in November 1952, when the transportation occurred, Nelson knew, beyond a reasonable doubt that her object in going to Chicago was to pursue her vocation rather than her avocation as a saleswoman.

The charge under the Mann Act is a serious one and the Court should not lightly sustain a conviction and stamp this man as a felon on evidence that is so uncertain and unsatisfactory and unpersuasive. Mary Johnson and Bannarn could have traveled by train just as well as by automobile. They had nothing to gain by traveling in Nelson's car except to save expenses, and under the evidence Nelson had no purpose in renting his car except possibly friendship for his passengers and the opportunity to make a few dollars.

Conviction may be had on circumstantial evidence, but when the circumstances are as consistent with innocence as they are with guilt, the defendant must be given the benefit of the doubt. The jury may have concluded that Nelson was probably technically guilty of the offenses charged and may have had a well-grounded suspicion in that regard in light of all the circumstances but such surmises and suspicion do not rise to the dignity of proof beyond a reasonable doubt. The mere act that a prostitute was transported in interstate commerce does not in and of itself establish a violation of the Act. There must be proof of

intent on the part of Nelson, to facilitate the commission of the illegal act which is condemned by the statute. That proof is lacking here. One may have little sympathy for Nelson because of his associations and because of his palpably false statement when he testified that he did not know that Mary Johnson was a prostitute. But such circumstances do not lessen the Government's burden in proving his guilt beyond a reasonable doubt. In passing on these motions, I see no distinction as to the sufficiency of the evidence as between the conspiracy charge and the substantive offense.

The Court concludes, therefore, after due reflection, that the motions of the defendant Nelson as to each count of the indictments are well grounded. It is therefore ordered that the verdicts of the jury rendered herein be vacated and set aside and that a judgment of acquittal be entered as to Donald Nelson in *United States of America vs. Robert Bannarn, alias Robert Barnarn*, and *Donald Nelson*, Case No. 8416 Criminal, and a judgment of acquittal be entered as to Donald Nelson in *United States of America* vs. *Donald Nelson*, Case No. 8445 Criminal.

The Government is allowed an exception.

Dated this 12th day of November, 1953.

By the Court:

GUNNAR H. NORDBYE
Chief Judge

Pursuant to the foregoing, it is by the Court

ORDERED: that verdicts of the jury rendered herein against the defendant Donald Nelson, be and the same are hereby vacated and set aside and that the defendant Donald Nelson is acquitted of the charges against him in the Indictments Nos. 8416 and 8445.

Endorsed: Filed Nov. 12, 1953, Chell M. Smith, Clerk, by Mary E. McCrea, Deputy.

Office - Supreme Court, U.S.
FILED
OCT 14 1957
JOHN T. FEY, Clerk

No. 551

Supplemental Record

IN THE

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 15,726
CRIMINAL

A. RAY SEGAL,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the District of Minnesota.

IN THE

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 15,726

CRIMINAL

A. RAY SEGAL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the District of Minnesota.

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IN THE

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 15,726

CRIMINAL

A. RAY SEGAL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the District of Minnesota.

Portion of the Testimony of

MARY K. JOHNSON

Q. Have you lived in Minneapolis at various times during your life?

A. Yes.

Q. At some time were you living on Bradford in Minneapolis, north Minneapolis?

A. Yes, sir.

Q. Did you live there sometime in the fall of 1952?

A. Yes.

Q. At what address on Bradford? A. 707 Bradford.

Q. And did someone stay with you or live with you at 707 Bradford in the fall of 1952?

A. Yes.

Q. Who was that? A. Robert Bannarn.

Q. And did Robert Bannarn stay with you off and on there at 707 Bradford in the fall of 1952?

A. Yes.

Q. And did you and he apply for a marriage license in the fall of 1952?

A. Yes.

Q. And then in November of 1952 did you take a trip anywhere?

A. Yes, we left Minnesota for Chicago.

Q. How did you make that trip, by rail, bus, automobile, or what?

A. Car.

Q. And whose car? A. It was Donald Nelson's car.

Q. And who went in the car with you?

A. Donald Nelson, Rebecca Aron, Robert Bannarn and myself.

* * * * *

Q. In the fall of 1953 did you give some testimony in a court room in regard to that trip and events following after that?

A. Yes.

Q. What court room was that in? Where was that court room?

A. Across the hall. It was Judge Nordbye's court room.

Q. In this building? A. Yes.

Q. Were you sworn as a witness at that trial? A. Yes.

Q. And who called you as a witness?

A. The Government.

Q. And do you know whether you testified on one or two days at that trial?

A. I testified two days.

Q. I am going to ask you some questions that were asked you at that trial. I am going to read the questions that were asked you at that trial and ask you if they were asked and the answers that I have been given and ask you if you gave those answers and if it was true or false. First you were asked a question at that trial:

"Did you at one time become a prostitute?"

And you gave the answer, "Yes."

Was that answer true or false?

A. True.

* * * * *

Q. Going back to questions that were asked and answers that were given at the Nelson trial. You were asked the question:

"Then did you get into another state?"

You recall that question being asked of you or that type of question?

A. Yes.

Q. And in regard to going into another state, in what state did that trip begin on in November of 1951?

A. It began in Minnesota.

Q. And in answer to the question, "Then did you get into another state?"

You gave this answer: "I don't know that. I couldn't tell you. I didn't look at any signs along the way. I don't even know what highway I was on."

I will ask you as to various parts of your answer to that question. "I don't know that." Was that true or false?

A. Would you repeat the question?

Q. The question was: "Then did you get into another state?"

The answer, "I don't know that."

Was that true or false?

A. False.

Q. Then the next part of that answer:

"I couldn't tell you."

Is that true or false?

A. False.

* * * * *

Q. The next question—would you tell the jury, please, in regard to that trip that began in Minnesota, that was on or about what date?

A. Well, I think it was either the 10th or 11th of November.

Q. Of 1952? A. Yes.

Q. And I think you testified you started out for Chicago in an automobile?

A. Yes.

Q. It was Donald Nelson's automobile?

A. Yes. We started out around 4 o'clock in the morning, I think it was. I am not sure of the exact time. We stopped in St. Paul, at my home, and picked up some clothes, and we drove for quite a distance and it was daylight, in the morning sometime, close to noon, and we got on the train—on a bus and in about two or three hours after we boarded the bus we got to Chicago. I had not noticed any signs or anything, but we had talked at the time about, Bobby and I had, about getting out of the car onto a bus and he had said that—

* * * * *

Q. And I believe you stated it was still dark when you started out for Chicago, is that right?

A. Yes.

Q. And then I believe you said some considerable time later you got on a bus?

A. Yes.

Q. Somewhere. How did you happen to change from a car to the bus?

A. There was another argument about money.

Q. And who was that argument between?

A. Bobby and Don.

Q. And what money did it concern?

A. The money to be paid for taking us to Chicago.

Q. And the result of that argument was that you and Bobby Bannarn got out of the Nelson car and took a bus?

A. Yes.

Q. And about how long a bus trip was it to Chicago when you got out of the bus?

A. I would say it was either three or four hours.

* * * * *

Q. And then after you got to Chicago with whom did you live, Mrs. Loveless?

A. Robert Bannarn.

Q. And did you live with him for a time when you immediately arrived in Chicago?

A. Yes.

Q. And did you continue to live with him throughout the balance of that year of 1952?

A. Yes.

Q. And on into 1953? A. Yes.

Q. And what does the expression "hustle" mean, Mrs. Loveless?

A. That's another word for prostitution.

Q. And did you, in fact, engage in prostitution? Did you hustle in Chicago from the time you first got there on about November 11, 1952?

A. Yes.

Q. And did you continue to hustle through, in Chicago, throughout the rest of the year—

Mr. Hammond: Just a minute. Please don't lead the witness. Just ask the questions.

The Court: I think that is right, counsel.

By Mr. Janes:

Q. Did you continue to hustle? A. Yes.

Q. For how long in Chicago?

A. Approximately a year.

Q. And how long into 1953 did you live with Bobby Bannarn?

A. Well, it was either September or October—no, it must have been October.

Q. Now, reverting back to the questions that were put to you at the Nelson trial still being questions by Mr. Dim, the United States Attorney, you were asked the question, "Did you hustle in Chicago then?"

And gave the answer, "No, I don't believe I did. I worked at Spiegel's Department Store when I first got there."

Now, I will ask you with regard to those answers by parts. Is this true or false, this answer, "No, I don't believe I did."?

A. That's false.

Q. And how about this part of the answer, the rest of it, "I worked at Spiegel's Department Store when I first got there."

A. That's true.

Mr. Hammond: Was that true or false?

The Witness: True.

By Mr. Janes:

Q. How long did you work at Spiegel's Department Store?

A. Just a few days.

Q. And approximately when did you work at Spiegel's Department Store?

A. Toward the end of November.

Q. The next question, "Did you hustle in Chicago since the time you made this trip?"

"Answer: I worked at Spiegel's for quite some time."

Is that true of false?

A. False.
Q. And in what way is that false?
A. Well, it was only a few days.

The Court: Can you keep your voice up, Madam Witness, so all of us can hear you well.

By Mr. Janes:
Q. The next question by Mr. Dim, "How long did you work at Spiegel's?

"Answer: I don't remember exactly, but it was for awhile and I was not hustling."

Now, I will ask you in regard to those answers part by part, the question being, "How long did you work at Spiegel's?"

Now, in regard to that part of the answer which is, "I don't remember exactly," was that true or false?
A. True.
Q. The answer, "But it was for a while," is that true or false?
A. Well, I don't know how long you consider "awhile." Two days, three days?
Q. But it was two or three days that you worked at Spiegel's?
A. Yes.
Q. And then as to this part of the answer, "And I was not hustling," is that true or false?
A. False.

* * * * *

Q. Next question, there having been some testimony in between before I get to this next question, and then that opens up, "I only brought up that December 31st so I could help you on these dates. You got there on November 11th. You worked at Spiegel's. Did you hustle in between November 11th and December 31st?

You answered, "No, sir."

Was that answer, "No sir," true or false?

A. False.

Q. Then it was put in, the question in this form, "No, sir." And you gave the answer, "No."

Was that "No" true or false?

A. False.

* * * * *

Q. And then the next question was, "And what did you need a day in money in order to live?" And you answered that by saying, "You mean as far as being an addict or just to live?" And the question was stated to be, "Both." Now, Mrs. Loveless, were you using narcotics between September of 1952 and the end of the year?

A. Yes.

Q. And were you using narcotics while you were in Minneapolis before you left for Chicago on or about November 11, 1952?

A. Yes.

Q. And did you continue to use narcotics throughout the period when you were in Chicago between November, on or about November 11th and the end of the ye ?

A. Yes.

Q. And did you continue to use narcotics on into 1953?

A. Yes.

Q. And did you have need for narcotics during the time that you were in Chicago in 1952 after this trip there?

A. Not immediately after I got there, but shortly after that I did.

Q. So that you were an addict during that period, were you?

A. Part of the time.

Q. And the rest of the time you were using narcotics?

A. Yes.

Q. Now, reverting back to the questions I just asked you, "And what did you need a day in money in order to live?" Then by answer you inquired, "You mean as far as

being an addict or just to live?" And the question was, "Both." And to that colloquy you made answer, "I was not an addict at that time." Is that true or false?

A. False.

Q. And then you made the statement, "I was not addicted." Was that true or false?

A. False.

Q. And then you made further answer, "I was not using—" Was that true or false?

A. False.

Q. And then the question, "And from November, November 11th, until December 31st you were not using?" And you made answer, "No." Was that answer true or false?

A. False.

* * * * *

Q. Now, the next question that was, or skipping, and then the question was given to you, put to you by Mr. Dim, "And you got to Chicago about November 11, 1952, and did you see Bobby?" And you answered as follows, "No, I didn't see him for a long time after that. I didn't know where he was. He was not renting the same place I was." Now, taking the first part of that answer, "No, I didn't see him for a long time after that," meaning after November 11, 1952, is that true or false?

A. False.

Q. And next, "I didn't know where he was," was that answer true or false?

A. False.

Q. And next, "He was not renting the same place I was." Was that true or false?

A. False.

Q. And then, "And then from November 11, 1952, until what time did you see him or hear from him again?" Then you made answer, "I think it was a little over a month I had not seen him at all." Was that answer true or false?

A. False.

Q. Then, "Question: Then you saw him for the first time?" "Answer: That is right." Was that answer true or false?

A. False.

Q. Then the question, "Where?" "Answer: Gee, I don't know." Was that true or false?

A. False.

Q. Next question, "Chicago?" "Answer: Yes, it was in Chicago." Was that true or false?

A. True.

Q. Mrs. Loveless, after you got to Chicago on November 11th, did you leave Bobby Bannarn immediately after your getting to the bus station so that you separated in the bus station or on the sidewalk?

A. No.

* * * * *

Q. And did you live with Robert Bannarn at all times from the time you arrived in Chicago until in November of 1952 until after the first of the year, 1953?

A. Yes.

Q. Now, skipping down to some further questions that were placed by Mr. Dim to you in the Nelson trial, "Did you do anything with reference to—before you crossed the State line?" "Answer: I don't really know if we ever did cross the State line. I wasn't watching and I don't know where the State line was, but I thought this car was following us and I told Don to slow down a little bit, but the car had disappeared so it hadn't made any difference. As far as the State line was concerned I have no idea. I wasn't watching. I don't remember signs or anything. I don't know even if we got across it." Now, in regard to those answers to the question which ended up, "Before you crossed the State line," I will ask you part by part as to the truth or falsity of those answers. First, "I don't really know if we ever did cross the State line." Is that true or false?

A. That's false.

Q. And next, "I wasn't watching and I don't know where the State line was, but I thought this car was following us and I told Don to slow down a little bit, but the car had

disappeared so it hadn't made any difference." Are those answers true or false?

A. The first part—

Q. I will break that down then, "I wasn't watching," in regard to the State line, would that be true or false?

A. That's true.

* * * * *

Q. "I don't know even if we got across it."

A. That is false.

* * * * *

Q. Now, just before the court recessed yesterday I had been asking you some questions that had been asked of you by Mr. Dim when you were sworn as a witness in the trial of Donald Nelson. I am now going to ask you some questions that were put to you by one of the attorneys for Donald Nelson, Mr. Segal's associate, at that trial, and I will read a question and an answer and, as you did yesterday, I would like you to tell the Court and jury, please, whether your answers then given were true or false. The first question and answer:

"Question: Miss Johnson, you did not go down to Chicago for any purpose of prostitution, did you? That was not your purpose, when you went to Chicago?

"Answer: Not when I left, no."

Was that answer then given true or false?

A. False.

Q. And the next question and answer:

"Question: So at the time that you left Minneapolis you had no intention to engage in prostitution?

"Answer: That is correct. I was not thinking about it."

Is that true or false?

A. False.

Q. The next question:

"Question: And you had no intent to engage in any immoral acts either, did you? You know what immoral activities are, anything wrong?

"Answer: Well, I didn't know what I might do, except I hadn't planned on it."

Was that answer true or false?

A. False.

Q. "Question: You had planned to go to Chicago to get a job, isn't that true?

"Answer: I was going to go there and work, yes."

Is that true or false?

A. True.

Q. And what kind of work were you going to do when you went there?

A. Prostitution.

* * * * *

Q. Then the next question:

"Question: And other than those plans, to get a job and to get away from someone, you had no other purpose in going to Chicago. Isn't that correct?

"Answer: Yes. I had not planned on doing anything wrong."

Was that answer true or false?

A. False.

Q. Then the question:

"Question: And as a matter of fact when you got to Chicago you did get a job, did you not?

"Answer: That is right."

Is that answer true or false?

A. True.

Q. And how soon after you got to Chicago did you get a job?

A. Approximately two weeks.

Q. And the next question was:

"Question: And that was for Spiegel's Department Store?

"Answer: Yes, sir."

Was that answer true or false?

A. True.

* * * * *

Q. The next question: "It was a daytime job. What time did you start work in the morning?" And you answered, "When they opened. I don't remember. I think they opened at 9, and I worked from 9 until, I think, 5:30." Was that answer true or false?

A. True.

Q. And for how many days was it true?

A. Either two or three.

Q. And the question: "A daily job from 9 to 5:30?" And the answer: "That is right." Is that answer true?

A. True.

Q. "Question: And you got paid every week?" And you answered, "Yes." Is that answer true or false?

A. True.

Q. Did you, however, actually get paid for that job?

A. No.

Q. But was it a job where if you were to get checks you would get checks every week?

A. Yes.

Q. And the question: "And for how long a period of time did you stay with Spiegel's?" And you answered: "I don't remember exactly. I don't remember how long it was." Is that answer true or false?

A. True.

Q. It was true in what way?

A. I didn't know how many days it was.

Q. And the question: "It was for at least a month, was it not?" And the answer: "It might have been less than a

month, but it was a period of time. I mean I did get some pay checks." Is that true or false?

A. False.

Q. "Question: Did you get paid every week in checks?" And the answer: "Yes." Was that answer true or false?

A. I don't know if it was tr[illegible]r false. I would have gotten paid every week.

Q. Did you get paid? A. No.

Q. The next question: "By Spiegel's?" And the answer: "Yes." Is that answer true or false?

A. True.

Q. True in what way?

A. I would have gotten paid by Spiegel's.

Q. "Question: And would you say you got at least three weekly checks?" And you answered: "I don't remember because I didn't pick up my last check. I was supposed to go back and pick it up and for some reason I never went back and got it." Now I will ask you in regard to that answer by parts. The question being: "The checks?" And the answer: "I don't remember." Did you at the time you were testifying remember whether you got at least three weekly checks?

A. Yes, I remembered.

Q. And what did you remember the fact to be in regard to that?

A. I had not gotten any.

Q. Then the answer was: "I don't remember because I didn't pick up my last check." Did you pick up your last check?

A. I didn't pick up the only check. It was there but I didn't get it.

Q. Then you said: "I was supposed to go back and pick it up and for some reason I never went back and got it." Was that true or false?

A. True.

Q. The next question: "There were at least three checks due you, is that correct?" And you answered: "I believe so." Was that true or false?

A. False.

Q. "Possibly more?" And you answered: "It might have been." Was that answer true or false?

A. False.

Q. And the question: "But no less?" And the answer: "No." Was that answer true or false?

A. False.

* * * * *

Q. Now, at the time you made these answers that you have stated yesterday and today were false, did you at that time, at the time you were testifying in the Nelson trial know the falsity of those answers?

A. Yes, I did.

Q. So that when you gave the false answers you knew them to be false?

A. Yes.

Portion of the Testimony of

MARY JO RICE

By Mr. Janes:

Q And has Mr. A. Ray Segal acted as your attorney at some time or other?

A. Yes.

Q. And did he at one time act—while acting as your attorney, come to the Hennepin County Jail or to the Municipal Jail here in Minneapolis and aid in your release on bail by posting bail?

A. Yes.

Q. Do you recall about when that would be?

A. I believe it was—I think it was on the 1st of March in 1954.

Q. When you were then released then he drove you from the jail, is that right?

A. Yes.

Q. And did you have any conversation with Mr. Segal at that time which in any way mentioned the appearance of a Mary K. Johnson as a witness in the trial of Donald Nelson?

A. Yes.

Q. Would you tell the Court and jury, please, was anyone else present when that conversation took place?

A. No.

Q. Would you tell the Court and jury, please, what was said in that conversation at that time?

A. Well, we didn't start talking about the Nelson trial. We started talking about the Carlisle trial, which he was working on at the time.

* * * * * *

Q. Do you know what kind of an offense the Carlisle trial was?

A. The conversation which was leading up was speaking of another trial and we had to stop at the time to see a girl, it was a friend of Carlisle, and afterwards—and after we were talking about that trial it led into the Nelson trial.

Q. And what was said?

A. Well, he had made the statement that you would have thought that Mary K. was telling the truth on the witness stand, she was a cool and calm witness, to put it in those words.

* * * * * *

Q. Did he say anything further about Mary K. or what he knew about Mary K. or anything like that or about what she testified to?

A. No. As far as the testimony in the court room was concerned, no

Q. What led to this conversation? What were you talking about when it got—

A. As I said, we had stopped to see this girl that was interested in Carlisle and we were talking about that case.

Q. What kind of a case was that?

A. I believe it was White Slavery.

* * * * * *

By Mr. Janes:

Q. And it was while you were talking about this coming White Slavery trial Mary K. Johnson's name was mentioned?

A. Yes, because Mary was in the Workhouse at the time and she wanted to see Segal and that was the main reason I had called him that afternoon.

Q. Did you say anything to Segal about what she wanted to see him about?

A. No. She had told me to tell him that she wanted him to come out there right away.

* * * * *

Q. Can you give the exact conversations of specifically what was said by whom, by you and by Mr. Segal or substantially what was said by you and what was said by Mr. Segal in regard to the Carlisle case that led up to the conversation that mentioned Mary K. Johnson?

The Witness: Well, I remember we had spent about an hour or maybe an hour and a half in her apartment. We had stopped there. And I knew very little of J. D. I had met him. I asked—

By Mr. Janes:

Q. J. D., that's Carlisle?

* * * * *

Q. Yes. Miss Rice, would you limit your testimony, please, to the conversation that, and the statements and the talk that took place now at the Carlisle, at the place this woman was that was in regard to the Carlisle trial?

A. Well, actually, what they said between them I don't know because I wasn't paying any attention. It was after we left the apartment.

Q. I see. Then, what happened after—then after you left the apartment would you give the words as well as you can remember that you made and Segal made in that conversation?

The Witness: Well, I had made a remark to Mr. Segal about he must have been a good attorney because quite a few people were commenting on the Nelson case and that is how it started. And he was telling me a little bit about the Carlisle trial, and he said he made a name for himself at the Nelson trial and that's how it came about.

By Mr. Janes:

Q. And then what words did he use and did you use in the conversation as it continued?

A. Actual words I couldn't repeat.

Q. Well, substantially the words that were used as best you remember?

A. Well, he was more or less boosting his own morale up.

Q. Well, he was more or less boosting his morale, can't you tell the jury what type of thing he was saying or what he was saying in those terms?

The Witness: He said that you would have thought that she was telling the truth on the stand by the way she acted.

Portion of the Testimony of

RICHARD T. DICKSON

Q. On this occasion you showed up in court the next morning on, when was it, January 8th or 9th, roughly?

A. In there, yes, sir.

Q. And she entered a plea of not guilty, said she wasn't plying her trade there, is that right? A. That is right.

Q. And the Judge believed her, is that right?

A. Evidently.

Q. At least he let her go? A. That is right.

Q. Did she make a nice appearance in court?

A. Did who?

Q. Did she?

A. No. No. The girl, I would say, roughly at that particular time weighed only about 80 pounds and it was cold

and she just had an open coat and little blouse and skirt and no stockings on. She looked tough. Pitiful case, tough, very bad.

* * * * *

By Mr. Janes:

Q. When you observed her arms on January 7th did they look as if she had been taking narcotics for some period of time?

A. Very much so. Above and below the elbows on both arms, and she started down here. After the veins start to get weak here they start going down here on the back of the wrist.

Q. They get weak because they have been used for injections of narcotics over and over again?

A. That is right, from infection.

Q. Then they start injecting themselves into their own hands? A. That is right.

Q. You say she was low in weight at that time?

A. That is right.

Q. From your experience with people that take narcotics do you have an opinion as to whether the narcotics contributed to her low weight or her appearance at that time?

A. Definitely.

Q. Contributed and caused them? A. That is right.

Portion of the Testimony of

ANASTASIA CARLSON

Q. And did you observe if Mary K. Johnson left the floor any more than usual?

A. She did. But since I found out what it was all about, I am not in the habit of having those kind of people around me, and I never expected anything.

Q. What did you observe in regard to her leaving the floor and where she went?

A. She went upstairs to the girls' room and she stayed quite longer than usual, and I really only had her on the floor, and I wanted her to let me know when she was leaving the floor so I could take over her station and not have my customers wandering around the store unattended. So she said she would and she made, the day she was there she made another trip upstairs shortly after the first one and I didn't pay much attention to her; and so I found out later that that's what she was upstairs for, using the needle.

* * * * *

Q: And you recall that she was going up to the ladies' room, I suppose a great many times during the day, and you didn't appreciate it at the time, and you found out since that she could have been taking narcotics while she was working there? A. That's right.

Portion of the Testimony of

SHELLY WARREN

Q. And what did Mr. Segal tell you in regard to testifying pursuant to that subpoena?

The Witness: He told me that I was never to admit to the Grand Jury that I had ever had intercourse with Godfrey Barrett, I had ever given him any money, I had ever traveled for purposes of prostitution, that I had only traveled on a share-the-expenses plan and that all of us shared expenses. I had received money from my mother in ordinary mail, that I had worked at various places under aliases which I couldn't remember because the places I worked I hadn't stayed long enough, only until I was asked for a Social Security card, that if I did that I would never have to go to trial because I was the main witness for Barrett and that if I did that, there wouldn't be any trial. And I asked him if he was going to go with me to Springfield because I was subpoenaed to Springfield and he said it would never

reach there, and he told me he defended a girl named Mary Johnson successfully, in a similar case and she had listened to him and the case had been beaten, and said that he told her to say that she worked at Spiegel's Mail Order House for two months, and that she testified in that manner and, whatever the case was, was never—they beat the case anyway.

By Mr. Janes:

Q. Then did you see Mr. Segal, was there anything further said at that conversation?

A. Not that I remember.

Q. Did you see Mr. Segal after that?

A. Yes. The third time he came to see me he demanded that the matron let me see him—or let him see me, that he was my attorney, and I sent word to the office that I did not have an attorney so he threatened her job if she didn't. So I came from the kitchen where I was working and I told him, I said, I told her, I said, "Mrs. Clark, this man is not my attorney. He represents Godfrey Barrett and Lovie Barrett," so he tore up the visitors slip and told me if I was so dumb and ignorant as to not accept sound legal advice it wasn't his fault and he wouldn't represent me if I begged him and he wrote another visitors slip and he left, and I never saw him again.

* * * * *

Q. Have you been in contact with the FBI officers regarding these trials here? A. No.

Q. Not at all? A. No.

Q. When you were in the Workhouse were you interviewed by the Federal Bureau of Investigation agents?

A. Yes, I was.

Q. Did you give a statement to him, to them about Godfrey Lee Barrett? A. Well, after quite a few weeks.

Q. After quite a few weeks did you sign a statement?

A. I wrote the statement and signed it.

Q. Yes.

Portion of the Testimony of

REBECCA ARON

Q. And was anything said in that conversation with Segal and you and Mary K. Johnson in regard to Mary K. Johnson being a drug addict or user?

A. I think there was some mention of that.

Q. What was said about that?

A. She wasn't supposed to mention anything about any narcotics.

Q. Who said she wasn't supposed to say anything about narcotics?

A. I am not sure but I think Mr. Segal told her not to say anything about her being a drug addict.

Q. And was anything said about Mary K. and Bobby having lived together in Chicago and what should be said about that?

A. I don't know. Really I don't. This is so long ago and I mean so much has happened to me and I can't remember all that.

Q. Now just take your time and see if you can recall if anything was said on that subject. Do you recall being asked that same type of question before?

A. Yes, I do.

Q. I will ask you again, was anything said in that conversation with Segal and Mary K. in regard to the subject of Mary K. and Bobby having lived together in Chicago after they arrived there after starting out in the car with you?

A. I think he asked her if they lived together.

* * * * *

Q. Tell what was said there by Mr. Segal and by Mary K. or by yourself, as the case may be, on that subject?

A. She wasn't supposed to say she was living with Bobby Bannarn.

Q. Mary K. was not supposed to? A. Yes.

Q. When she testified in the Nelson trial? A. Yes.

* * * * *

Q. That's the 17th of September that you called him?

A. Yes.

Q. And what was said in that conversation?

A. Well, I called up and told him that I would like to talk with him. I wanted to see him.

Q. And had anything occurred between that, your calling him and the previous conversation that made you think you wanted to talk to him? A. Yes. It had.

Q. And what had occurred?

A. Well, I don't know if it was a practical joker or what, but it was worrying me, and I wanted to find out for myself because I was getting, I had gotten two or three calls, and, concerning my leaving town, receiving some money to leave town or something.

* * * * *

A. And, well, that is why I called him up, because I didn't want to talk to him on the telephone. I wanted to talk to him and I could get a better explanation why and—

Q. Did you tell him what you wanted an explanation in regard to?

A. No. I think I said to him, I said, "I think it is about time I talked to you because it seems as though I am either going to end up dead or go to jail."

Q. What did he say?

A. He asked me when I could come down, if I could come down, and I told him no, and I asked him would he come by my house, so he said he would.

* * * * *

A. Well, I don't remember all that I said because, like I say, I was pretty upset. I asked him did he know who it was. I don't know if he said no or yes, but anyway I said this is Becky and—

The Court: Said what?

A. (Continuing) I told him, "Mr. Segal, this is Becky." I said, he said, "Yes." He said, "How are you?" And I said, "Fine." I said, "I think it is about time I talked to you," and—I said, "This thing seems to be getting pretty serious." He said, "Yes, it is." And I think that is when he asked me when could I come down to see him and of course I told him, like I said before, that I couldn't come down and he was to come by my house the next day.

* * * * *

Q. Do you remember passing the State Capitol as you were going to St. Paul and going down to Kellogg and going over a bridge and going towards Hudson, Wisconsin, do you remember that?

A. I remember we went over a bridge but I don't remember what street or Capitol or anything like that because I just wasn't paying too much attention.

Q. You kept on going down towards Chicago. You drove quite a few hours, is that right?

A. It must have been because it was daylight later on. We drove for a long time because I was very tired.

Portion of the Testimony of

EVELYN A. DOERING

A. Yes. Well I said hello. He asked whether this is the American Insurance Company and gave his name, A. R. Segal, Attorney at 854 Midland Bank Building, Minneapolis. He asked for a description of my husband and when I asked him why he wanted this description he said he was checking on some car registrations and he found one car registered in

Herb's name and he gave the type car and the license number and another, car, a Chevrolet, he gave the make of the car and that he said was registered in Herb's name and the company's name. He didn't explain why he wanted that information. It was just this attorney calling. Then he said that my husband was at the home of a young negress. He gave an address and he said she was 25 years old, a prostitute of the lowest order and Herb was there at 4:15. Then I asked him why he was calling and he said that Herb was interfering in some private affairs of his and he wanted Herb out of the picture. Because he hadn't given a very good description of Herb he therefore said he would not tell me about his private investigations. I think that is all.

* * * * *

Q. Would you resume telling about the conversation of March 17th that you said opened up by the other party saying this is A. Ray Segal?

A. He said he had called Bob's office and he had told them the story about Herb as he had outlined it to me; that he was going to call Mr. Whitchurch as he was under the impression that Herb worked under him and he was going to tell or call what would be the American Rockford's office when he got around to it, but he didn't seem to know where to phone and he wasn't terribly clear about calling Bob's office. This was Saturday afternoon or something and I don't see how he could have called him then, but he must have called him in the morning.

Q. And then what was said?

A. Well, it seems to me, I think he said, "I don't see why the company would employ a man like Herb." Then he went on to give me the description of a Buick and the Chevrolet and said that Herb had spent the night with Becky Aron. I think he repeated a description of Becky Aron and then he said when they had stopped following Becky and Herb they were getting gas in a gas station and Herb was teaching her how to drive. At this time he had a very good description of Herb.

Q. A very good description of Herb, your husband, is that right?

A. Yes.

Q. I repeated that because it was a little hard to hear.

A. Then I asked why the investigation and again his interest. He said they wanted Becky Aron as a witness for some morals charge and they wanted Herb out of the way and he said if Herb would quit giving her money and supporting her they would be able to get Becky Aron to leave town. Of course, that kind of left you speechless. I told him it was a terrific shock and I didn't know what to do.

* * * * *

A. I called Mr. Whitchurch.

* * * * *

A. I phoned Mr. Gislason.

Portion of the Testimony of

ROBERT H. WHITCHURCH

A. A party answered and I said, "Is this Mr. Segal?" And he said, "Yes, it is." I said, "I am Mr. Whitchurch with the American Insurance Company and Mrs. Doering from New Ulm just called me and was quite excited about her husband. She said that you had—"

Mr. Hammond: This is conversation you are having with Segal?

The Witness: With Mr. Segal, yes.

Mr. Hammond: Go ahead.

The Witness: "She said that you had just made a phone call to her and it seems as though Herb is in trouble." Mr. Segal then said, "Yes, he is. And what kind of a company is the American Insurance Company to have a man like that working for them?" "Well, what do you mean?" And he said, "I will tell you the kind of a man he is. For two years

he has been supporting a colored prostitute by the name of Becky Aron. In fact, he is with her today. He has bought her," I believe, "a blue Buick automobile," license number is so and so, "and furthermore the two of them were picked up in the Frederick Hotel," and I believe he said, "in January of this year," or, "January last on some sort of a morals charge." He said, "If you want to verify this it is in the police records." Then I said, "Well, Mr. Segal why are you interested—" Or wait a minute. I said, "Mr. Segal, what has this got to do with you," or, "Why are you interested in it?" And he said, "Well, Mr. Doering is posing as a doctor and that he is advising Becky on matters that he doesn't know anything about." And I said, "Well, did you say Herb was up there now?" And he said, "He and Becky have just left the house," and I don't know whether it was to either drive—either give her a driving lesson or to take some laundry to the laundromat, but he said, "You better get up there right now and get him out of there." And about that time I agreed with him. So my wife and I got in the car and went up there, found Herb and Becky on the front porch, and I drove his car back to my house and my wife drove her car, or my car back to our house.

• • • • •

Q. But you could hear what Mr. Doering said to Mr. Segal?

A. Yes, sir.

A. I heard — wait a minute — I heard Herb say to Mr. Segal, "I know Becky was in the room at the time of the conference or discussion but she didn't hear anything because her back was turned so there isn't anything you have to be afraid of." And then—oh, I heard—there was more conversation and all that and then Herb said, "Why should I get her out of town?" And then there was more conversation and Herb said, "There isn't any more harm you could do me than you have already done." Then a lot more conversation and that was about it.

Portion of Testimony of

SIDNEY P. GISLASON

Sidney P. Gislason testified:

Q. Then would you give the conversation as it took place between you and Mr. Segal?

A. Well, yes, I can give it to you in substance, as I recall it. I told him about Mrs. Doering and that she had called me; I think I asked him what he was doing or what he was trying to do, and he explained then to me, as near as I can recall it, that Mr. Doering had been associated with a girl named Becky Aron; that Becky Aron was to be a witness in some case in which Mr. Segal was involved; that Mr. Doering was interfering with that witness and that he, Mr. Segal, was fighting for his life. The balance of the conversation, as I recall it, was simply my telling him or suggesting to him that he not bother Mrs. Doering any further. That was substantially the conversation as I recall it.

Portion of the Testimony of

IRVING NEMEROV

Q. Do you recall, Mr. Nemerov, at any time, having any conferences in your office when Mr. Segal was present?

A. Yes, sir.

Q. And do you recall on or about the time that took place?

A. It was the—it was some time during the week before the trial and it was in an evening of one of those days.

* * * * *

Q. It was you, Mr. Segal—

A. And Becky Aron and Mary K. Johnson.

* * * * *

Q. And what conversations took place then in your office in the presence of each other?

A. Mary Johnson carried most of the conversations and most of it was again general conversation in respect to her life, use of narcotics, Bobby Bannarn's life, her continued feud with the Federal agents, things like that. She again kept telling me and kept impressing upon me how the Government was so well prepared on the railroad trip that she took with Bannarn a couple of months previously.

* * * * *

Q. Was there anything said about the facts on the automobile trip that you can recall?

A. Not much that I can recall. I know Mary Johnson had the floor and when she talks, she talks and you can't very well interrupt her.

Q. Do you recall anything she said about why she went to Chicago? Was there anything said in that conversation in respect as to why she went to Chicago on that occasion?

A. That night I remember her saying something about working at Spiegel's and I was surprised to hear her say that.

Q. That she was working at Spiegel's? A. Yes, sir.

Q. Was there anything said about Donald Nelson, how he came into the picture?

A. Very little that I remember that she said at all because I wasn't interested. I think she may have said something about the automobile trip but I wasn't interested in the automobile trip. I had to overcome three counts in that railroad trip and there was only one count on the automobile trip.

* * * * * *

Q. Was Becky Aron taking part in any of the conversations, do you know?

A. Well, not too active a part. She was walking in and out of the office. She seemed to be very—I don't know. She would go to the washroom or she would go—in the reception

room we have a water fountain, keep going to the water fountain. She didn't seem to take any active part at all.

* * * * *

Q. Do you recall any conversation being had at that time as to what Bobby Bannarn and Mary Johnson were doing in Chicago other than what was mentioned about Spiegel's?

A. I was only interested in their lives since the railroad trip, which was only previous to this time a very short time. They were living together and she, in her terms and the terms of the street, was hustling for him. There was no doubt in mind. That was understood. She did tell me these people in the hotel would testify they brought her tricks.

Portion of Testimony of Defendant

A. RAY SEGAL

DIRECT EXAMINATION

Q. And were you retained in the case of Donald Nelson at any time, Mr. Segal?

A. Yes, I was. Donald Nelson called me from Hennepin County Jail.

Q. Will you give us the time on, about when it was?

A. That was the, some time, I believe, in September, latter part of September of 1953, and I went up to see him in the jail in response to that call; and the first thing I asked him was whether he was in a position to raise any money to pay for the attorney's fees and cost of investigation. He said he had no funds, and I told him that it's too big an undertaking to get into without having some retainer and that I didn't think I would be willing to handle it, and I came back to the office, and I felt that was the end of the matter. Now, Mr. Wasserman was at the office at the time, and I happened to mention to him that I had been over there to talk to Mr. Nelson, and I knew that Mr. Wasserman was interested in learning something about Federal criminal pro-

cedure, and he asked me if I had any objection if he went over and talked to Nelson. And I said no, not at all. He then went over to talk to Mr. Nelson, had an interview with him and came back and told me, he says, "You know, that fellow isn't guilty of anything." I says, "Well, but, who is going to pay us for the time?" He says, "Do you mind if I take it over and be associated with you and use your name on the pleadings with mine and I will rely on the experience you had in the Stone matter to handle the case?" And I said, "Well, if you want to do it for free that's entirely up to you." So he says, "I will go back and talk to him again." He went back and talked to him again and I think persuaded him to agree to sign a note for $1,500.00 and come back and told me, he says, "Well, I am going to be able to get a note from him." I said, "How are you ever going to collect it?" He said, "At least we will have a note in the event at some future time he is able to pay, maybe we can get paid." I said, "I will sit in behind you and help you but I am not going to do any of the work." Then he continued to do the work of interviewing him again and getting the research on the law.

* * * * *

Q. Did you have an occasion, Mr. Segal, to be present at a conference had in Mr. Nemerov's office?

A. Yes, I was present.

Q. And will you tell us about when that was if you can remember?

A. Two or three days before the trial was scheduled to start. That may have been somewheres around the 19th or 20th Mr. Nemerov called the office and wanted to talk to Mr. Wasserman. Wasserman wasn't in at the time and he mentioned that he would like to have either Wasserman or myself come over to his office late that afternoon as Mary K. Johnson was going to be there and maybe we would be interested in learning what the facts were in reference to the Nelson trial because he says, "I represent Bannarn, you fellows represent Nelson, we ought to get together

and see what all of these facts are that are going to be introduced in this case," and I says, "That sounds logical and if Wasserman doesn't get back here, why I will come over myself." Wasserman didn't come back that afternoon and so I went over to his office about 5:00 or 5.30, somewheres in that neighborhood.

Q. And when you got over there who did you find?

A. Mr. Nemerov was there and Miss Johnson was there and Becky Aron was there and I believe Norman Perl was there.

* * * * *

Q. Was there any discussion then about these charges against Bannarn and against Nelson?

A. Yes, there was a lot of conversation by Mary Johnson concerning things in general that did not seem to make sense to me. She kept rambling on about Bannarn. She seemed to be quite interested in wondering whether she could help him in any way to get out of all the trouble he was in. She wasn't particularly interested in Nelson. All I was interested in was to hear what she had to say with reference to this trip that they were supposed to have taken from Minneapolis to some place in Wisconsin and my recollection is that she mentioned that offhand two or three times and she mentioned about that she had known that Donald Nelson was a cab driver and that she had talked to him about driving her and Bobby to Chicago and that she wanted to get away from the city because at that time she had stolen some narcotics from a fellow by the name of Floyd Love and that Love was after her and in addition her boy friend Bannarn had a floater and was supposed to be out of town and he had been dilly-dallying around and she was afraid they were going to pick him up and she was anxious to have Nelson get going as fast as he could on that particular trip. Of course Becky was in and out of the office there and took no part in the conversation and Nemerov tried to ask her a question here and there but sometimes she would answer and sometimes she would go

on to some other subject. But the sum and substance of her conversation led me to believe that Nelson was merely going to drive her and Bannarn to Chicago for a consideration of some $45.00, as I understood it, from the conversation she was giving, and I felt in view of the rambling remarks that she had made there wasn't any kind of a case against Nelson. I think that is all there was to it because we didn't stay there very long. I don't think we were there more than about 45 minutes in all.

* * * * *

Q. From the information you had prior to the time you went over to this conference was there any doubt in your mind Mr. Nelson had gone down into Wisconsin?

A. No, none at all.

* * * * *

Q. But I mean did she tell you, give you any facts at that conference that you had telling you what she was doing in Chicago after she arrived there in November of 1952?

A. No, sir.

Q. Did she tell you at that time that she was living with Bannarn as man and wife in Chicago in 1952?

A. No, sir, she did not.

* * * * *

Q. Was there anything else in this conversation now that you can recall that I haven't brought out—that I haven't brought to your attention?

A. No, other than she seemed to be concerned with Bobby Bannarn and she seemed to want to protect him and to get him off with some light sentence or get him absolved of any crime of any kind.

* * * * *

Q. Now this little girl, Becky Aron, was she—were you representing her in matters, Mr. Segal?

A. Yes, I represented her on two or three different occasions.

* * * * *

Q. And in October, 1953, when the Nelson trial came up—

A. The representation was generally along the same line. Whether she had something in October, 1953, or not, I don't recall offhand. I can't seem to remember. Yes, she had been in some little difficulty at that time. She and Donald Nelson had some kind of an automobile on which there was a payment due or an arrears and she had a call from the finance company that was financing the car that they were going to take the car away from her unless she made the payment and she came up to my office, I believe, and she indicated that there was a payment behind. I told her, "Well, under the conditional sales contract agreement that was made here they can take that car away from you." As a matter of fact that was the time when Donald Nelson had been picked up and was in jail and she had the car and the payment became due while he was in jail. I told her if she wanted to keep the car she would have to go down and make the payment. So she went down and made a payment to one of the clerks there and got the receipt. The finance company apparently had gotten wind of the fact that Nelson had been arrested and was in jail and his name was on the contract. Although they gave her the receipt in Donald Nelson's name, they immediately contacted her—I don't know how it was, either in person or by phone, and gave her the money back on the payment that she made, claiming that there was a mistake made, they weren't supposed to accept the money, and they went out and repossessed or replevined the car. So she came back to the office and was complaining bitterly about the fact that I had told her to make the payment and they gave her the money back and they grabbed the car and they had certain equity in the car and what could we do about it. I told her, "I am too busy to monkey with that type of

procedure, you can come back and talk to Wasserman. I think Wasserman will be able to take care of you." I don't know whether she waited or came back, but Wasserman did take over from there on and did file an answer to the replevin proceedings.

* * * * *

Q. In the spring of 1956, in the trial in which you were concerned with, did Becky Aron testify for the Government?

A. In January, 1956?

Q. In March of 1956.

A. Yes, she was a witness in my case before Judge Nordbye.

* * * * *

Q. How about this transaction in March of 1956, did you hire a private detective for the purpose of making some investigation for you?

A. Yes, I did, in, I believe it was in the early part of March or middle of March I contacted the Bush Detective Agency, which has offices in the Phoenix Building in Minneapolis and I explained to some fellow there I wanted to have them send a fellow out to check upon Becky Aron at 525 Penn Avenue North and to put some surveillance on her for a few days to see just what was going on with reference to her activities. I explained to him she was going to be a witness in a case that involved me which was coming up sometime in March. He went out there to interview her and when he got there he was talking to her—

* * * * *

Mr. Janes: May we have the name of the Busch Detective Agency man he referred to?

The Witness: I don't know what his name is offhand. I can't recall that, but they have an office here in the Phoenix Building.

* * * * *

CROSS-EXAMINATION

By Mr. Janes:

Q. Mr. Segal, in conferences with Becky Aron that you just testified to took place where?

A. In my office.

* * * * *

Q. You testified in the United States District Court for the District of Minnesota in March of last year when this case, the same case that is now being retried was tried before the Honorable Chief Judge Gunnar Nordbye of this district, did you not?

A. Yes, I did.

Q. And at that time you were sworn as a witness in your own behalf?

A. I was.

Q. Do you recall giving testimony of this type, the question was asked of you by—you were then represented by Mr. Frank Collins, were you not?

A. Yes, I was.

* * * * *

Q. And then the question was asked, "Had she ever been there prior to the Nelson trial?" And you gave answer, "No, never." Do you recall giving that answer at that time?

A. No. I don't recall it.

Q. And then you were asked the question, "The only time you saw her prior to the Nelson trial was in the City Jail, is that correct?"

A. The only time I saw her in the City Jail was when?

Q. The question was, "The only time you saw her prior to the Nelson trial was in the City Jail," and you gave answer, "Yes."

A. Yes. I saw her in the City Jail, I believe, on one or more occasions.

Q. The question was put to you, "The only time you saw her—the only time you saw her prior to the Nelson trial

was in the City Jail?" And you gave answer to that question, "Yes." Answer that yes or no or whatever you recall about it, did you give that answer to that question at that trial?

A. I don't recall that. I don't recall whether, how that question was put, but the actual facts as I recall now, it's a matter of trying to think back three years and many, many things go through a law office and my recollection now as I think back is that I saw her in the City Jail at least once and possibly more.

Q. Right. And had your recollection then changed as to this answer—to this question, "Had she ever been there prior to the Nelson trial?" And you gave answer, "No, never," and that testimony then given before that jury was incorrect?

A. It's incorrect as far as my recollection at the present time is concerned.

Q. But it might have been correct so far as your recollection at that time was concerned?

A. No. I don't know whether I understood the question at that time.

Q. But you understand the question I have referred to?

A. Yes, I understand what you are talking about.

Q. The question asked, had she ever been there prior to the Nelson trial?

A. Yes. She was there prior to the Nelson trial.

Q. And that refers to the office? A. To my office.

Q. Yes. Now, you testified in regard to a note of $1,500.00 that was given by Nelson in payment of or for his attorney's fees?

A. Yes, I did.

Q. Was that note yours or was it Mr. Wasserman's or was it both of yours?

A. I really don't know. Mr. Wasserman was handling the entire transaction. I understood from what he told me that he had prepared a note and that he had Mr. Nelson sign it and that he subsequently brought suit on the note and that he recovered a judgment on it, and he told me that the judg-

ment was on file and of record in the District Court of Hennepin County and that it's still unpaid.

Q. Were you to participate in that $1,500.00?

A. I assume that he would probably pay me part of whatever fees he eventually collected if he ever collected anything.

Q. Was anything, money or property, ever collected from Mr. Nelson?

A. Collected?

Q. Was anything, money or property ever received by you or Mr. Wasserman from Mr. Nelson?

A. I think Mr. Nelson at one time came into the office and paid Mr. Wasserman $10.00.

Q. How about a watch?

A. Yes. There's a man's watch and a small man's diamond ring in an envelope in the office with Mr. Nelson's name on it.

Q. Mr. Wasserman no longer has his offices with you, does he?

A. No. Mr. Wasserman moved, I think, in the spring of this year to 512 Nicollet Building.

Q. And is the watch in your office or Mr. Wasserman's office?

A. No. That is in my office.

Q. And was there also a mortgage of any type given as security for that note?

A. Yes. I believe Mr. Wasserman had Don Nelson execute a chattel mortgage on the '52 Buick automobile which Mr. Nelson owned and which he used in driving these people to Wisconsin, which automobile was repossessed by the finance company during the week of the Nelson trial, so that the security became null and void.

* * * * *

Q. Now I believe you testified—did you ever see or know Mary K. Johnson before your discussion of the Nelson case with her?

A. No, I never knew her before.

Q. Did you ever see her before?

A. I may have seen her but I wouldn't want to say positive, because I didn't know her and the first time I actually met her or was introduced to her was in Mr. Nemerov's office when he introduced her to me and I said hello, and she stretched her hand out. I didn't go over where she was. She was sitting in a chair and I remained where I was. I didn't shake hands with her.

Q. You may have seen her up along the Avenue?

A. It is possible.

Q. You have been in Jimmy Baker's Cafe Society quite often, haven't you?

A. Yes. He was a client of mine and had collected rents for me and I used to be up there to see him to collect these rents, oh, as often as sometimes once a week or once in two or three weeks.

Q. You represented him in an OPA case? A. Yes.

Q. Did you ever represent him in any troubles with the Minneapolis Police that he had?

A. Yes, I did.

Q. How many times? A. Possibly two or three times.

Q. When, during what period?

* * * * *

A. Yes, I have represented him for some eight or nine years, represented him when he purchased a home. I examined the abstracts and the title and deeds and all the papers.

By Mr. Janes:

Q. In what matters did you represent him in his troubles with the Minneapolis Police?

A. I think he appeared in Police Court here for some traffic violation or some health ordinance with reference to the operation of his cafe and—

Q. Did you represent him in licensing troubles?

A. Some license difficulties I believe it was.

Q. He had difficu' y off and on with the Minneapolis Police with his place of business?

A. No, I don't think so.

Q. And you did represent him so when you had this estate and needed rents collected on that then he collected the rents for you on that property?

Q. But then you had him also collect the rents for the estate along about 1953 and then you started acting for yourself in that regard for the estate, is that right?

A. In May of 1953, yes, I took the property out of his hands.

Q. Are you still acting for the estate? A. Yes.

Q. And collecting the rents for it? A. Yes, I am.

Q. What estate was that?

A. That was the Nathan Ettenberg estate and that prop'erty was sold to Michael Cuda in 1948.

Q. The property was sold in 1948 but you continued to collect the rents for the estate until 1953?

A. Not for the estate, for the new owner.

Q. And who was the new owner, what name was that?

A. Michael Cuda.

Q. Where does Michael Cuda live?

A. 2022 Queen Avenue North in the city of Minneapolis.

Q. And as you collect the rents you turn them over to Michael Cuda?

A. No. The property was purchased for $4100.00 and title was put into his name but he is a brother-in-law of mine so I retain the control of the property until such time as he is able to pay that $4100.00. If you wish to see the deeds I have them right here with me.

Q. I didn't ask for the deeds at this moment but now that you have them there I will place them on the table. You collected the rents until such time as he has paid the $4100.00 you lent him?

A. No. The $4100.00 was paid on the property and it was put in his name with the understanding if and when he is

able to pay the $4100.00 then the property will be turned over to him.

Q. In fact the property is in his name already, is that right?

A. It is, and so are the fire insurance policies in his name.

Q. You own that property actually?

A. I own it right now.

Q. You own that property?

A. That is right, to all intents and purposes I own it.

Q. And you have owned it for how long?

A. Since November of 1948.

Q. And you testified yesterday that you were collecting those rents up until 1953 for an estate?

A. No, I didn't say for an estate. I said I had represented an estate to begin with.

Q. You were talking about an estate yesterday involving a Ben Phienas Ettenberg, weren't you?

A. That is right. He was one of the heirs. A warranty deed signed by his guardian in the probate Court, Hennepin County, Minnesota

Q. That is the estate that owned a one-third interest in this property at 707 Bradford Avenue?

A. Until 1949, I believe.

Q. At which time you bought it?

A. No. It was purchased in 1948 but because one of the heirs was an incompetent it was in Probate Court and they had to have a Probate Court proceeding to have an appraisal made and to approve the sale.

Q. But you bought it in 1948 and 1949?

A. That is right.

Q. And you bought it from an estate that you were representing and it was an estate of an incompetent who was in a mental hospital, is that right?

A. He had a one-third interest in that estate.

Q. And you bought that one-third interest from the estate you were representing?

A. No. It was to be purchased by my brother-in-law.

Q. You just told this jury you bought this property, didn't you?

A. Yes, I did. I furnished the money.

Q. And you bought it and you say you owned it?

A. I own it for all practical purposes until he is able to pay that $4100.00.

Q. How much rent have you collected from this property since you bought it?

A. My books and records will show that.

Mr. Hammond: What materiality is that. I object as wholly irrelevant and immaterial.

Mr. Janes: I think it is quite material.

The Court: He may answer.

By Mr. Janes:

Q. What rents have you collected since you bought that property in 1948 or 1949?

A. Mr. Janes, do you think that I am an adding machine that I can give you all those figures? I have books and records with all those facts and figures. The income tax returns are available, I have got copies of them any time you want to see them.

Q. You bought it in 1949 so you had it in 1950. Did you return the income from the property in your 1950 income tax return?

A. I can't recall offhand. I don't know.

Q. You would have had income from that property?

A. Not necessarily. It was vacant for some considerable period of time.

Q. I hand you a sheet of paper which says individual income tax return of 1950. I will ask you if that is your income tax return for 1950?

Mr. Hammond: Do you want to mark it as an exhibit?

Mr. Janes: I don't plan to offer it at this time. I may later. Wait and see what the witness says about it.

A. That is my signature on there.

By Mr. Janes:

Q. Is there any mention of any income of any kind from that 707 Bradford Property in that income tax return?

A. No, I don't see anything listed on this return here.

Q. I am now handing you what says U.S. Individual Income Tax Return 1951. I will ask you if that income tax return as filed—handing you that return for 1951, I will ask you if that is your return for 1951 and what mention there is in there regarding income from this property at 707 Bradford?

A. I don't believe this is the complete return, although my name is on the front page of this 1951 return.

Q. Here are the papers that I removed from being attached. I will ask you if any of those were a part of that return as originally filed?

• • • • •

The Witness: No. It seems to be that Schedule J of the partnership and so forth, profit and loss statement doesn't seem to be in here.

By Mr. Janes:

Q. Is there anything missing from that return as you have it in your hands in relation to rental income that is not now present in the papers that are in your hands that was included in the papers as filed by you as your 1951 income tax return?

A. There could be.

Q. Handing you what purports to be individual income tax return for 1952, I will ask you if that is your income tax return for that year as filed by you?

A. Yes. This is the return that I made showing rental income from, among other things, the property on Bradford.

Q. What income does it show of your income from the property on Bradford for that tax year?

Mr. Hammond: I understand, Your Honor, I have objection to all this stuff as wholly irrelevant and immaterial to our inquiry here and also prejudicial?

The Court: Your objection is noted. You may answer.

The Witness: What was the question again?

By Mr. Janes:

Q. What gross and what net income, if any, does that 1952 income tax return of yours show for the property at 707 Bradford?

A. It shows a net rental income after various deductions for heat, gas, electricity, water, insurance, repairs, taxes, depreciation of $1,663.03.

Q. And a net income of what?

A. Sixteen hundred sixty-three dollars three cents.

Q. From the property at 707 Bradford?

A. 707 Bradford.

Q. And handing you what purports to be United States individual income tax return for 1953, I will ask you if that is your income tax return as filed?

A. Yes, it is.

Q. And does that return show income, net income from property at 707 Bradford Avenue?

A. Yes, it does.

Q. And by net income you understand me to mean profits after all expenses?

A. Right.

Q. And what net income does it show that property produced during that year?

A. Eight hundred twenty-one dollars forty-seven cents.

Q. And you still own that property, Mr. Segal?

A. Still under my control.

Q. Do you still own that property, Mr. Segal?

A. No. The record owner is Michael Cuda.

Q. Well, you owned that property for some years, didn't you?

A. I have been dealing with that property possibly ten, twelve years.

Q. Well, you testified a few minutes ago that you owned that property?

A. I say for all practical purposes I own it.

Q. All right. For all practical purposes do you still own that property?

A. Yes, I do.

Q. And there has been no change in the situation of your ownership since about 1948 or 1949, has there?

A. That is correct.

Q. And you testified yesterday that at the time this estate sold that property it had lost a great deal of value?

A. Yes, it had.

• • • • •

We tried to sell it. I believe we contacted various real estate agents in the neighborhood and the best figure we could get was $4,100.00.

• • • • •

By Mr. Janes:

Q. You have seen Becky Aron around Jimmy Baker's, haven't you?

A. I may have seen her there once or twice or three times. I wouldn't know.

Q. And you have seen Dorothy Nelson around there several times, haven't you?

A. It is possible I may have.

Q. And you have seen this Mary Jo Rice around there several times, haven't you?

A. I don't recall ever seeing her up there that I can recall offhand now.

Q. And you have seen Mary K. Johnson around there several times too?

A. No, I wouldn't say so. Most times she was probably in the workhouse, in jail, or out of the city.

• • • • •

APPENDIX

PORTIONS OF TRANSCRIPT OF TRIAL
MAX HERMANN vs. JOSEPH ST. DENNIS

State of Minnesota
County of Hennepin

Municipal Court
City of Minneapolis

MAX HERMANN,
Plaintiff,

vs.

JOSEPH ST. DENNIS,
Defendant.

UNLAWFUL DETAINER ACTION

The above entitled matter came on for hearing before the Hon. D. E. LaBelle, one of the Judges of the above named Court, on the 9th day of October, 1945, without a jury, at which time the following proceedings were had.

Mr. A. R. Segal, Esq., appeared for the plaintiff.

Mr. George Townsend, Esq., appeared for the defendant.

• • • • •

DIRECT EXAMINATION

By Mr. Townsend:

Q. Mrs. St. Dennis, you are the wife of Joseph St. Dennis, the defendant in this action?

• • • • •

Q. (Mr. Townsend) Do you recall when you received the registration letter dated August 31st, the registered letter on Mr. Segal's stationery which I am showing you?

A. It was on Tuesday morning following that, that would be about the 3rd I believe or the 4th of September, it was on Tuesday morning about 8:00 o'clock.

• • • • •

Q. How do you fix the time and the date in your mind as to the day that you received it?

(Plaintiff's Exhibit A marked for identification by the reporter.)

Q. I show you plaintiff's exhibit A and ask you if that is your signature on it?

A. It is, yes.

Q. Your Honor, I call attention to the fact the date of delivery has been altered and the initial of the postman signing the thing isn't on it; in addition to that, Your Honor will notice that this was received as a registered letter August 31st and while it is sent Special Delivery it would be a physical impossibility I am sure to have it reach the St. Dennis home at 8:00 o'clock on August 31st, the same day it was mailed.

The Court: Do you wish to examine?

Mr. Segal: Yes. You are absolutely certain that you received this letter on the morning of Tuesday, September 4th, 1945?

A. Yes, I am.

* * * * *

Q. And showing you Exhibit A again, do you recognize your signature on that?

A. That's my Special—

Q. (interrupting) That's the card that you signed at the time you got this registered letter for the notice to vacate.

We offer in evidence Plaintiff's Exhibit A and showing the postman return form on September 1, 1945, three days before she claims she ever received that.

REDIRECT EXAMINATION

Mr. Townsend: That would be the September 1st, would be the date it would be received at the post office on the way out.

Mr. Segal: No, it wouldn't, that was the time.

Mr. Townsend: I don't agree.

Mr. Segal: It certainly discredits the testimony of the witness that she got that on September 4th.

Mr. Townsend: It is obvious this has been altered.

Mr. Segal: It is certainly very obvious she didn't get it on September 4th like she claims.

* * * * *

The Court: Are you going to testify?

MR. A. R. SEGAL, a witness, called on behalf of the plaintiff, having first been duly sworn, testified as follows:

(Plaintiff's Exhibits B and C marked for identification by the reporter.)

Mr. Segal: On August 31, 1945, I personally typed out a letter and addressed an envelope to Joseph St. Dennis at 1316 13th Avenue South in the City of Minneapolis, the notice was to vacate these premises and the letter was sent by registered mail special delivery.

Mr. Townsend: Just a moment, counsel, as long as he is testifying, Your Honor. May I ask a question whether he knows, I think it would save time. Do you remember what time you typed that letter?

Mr. Segal: That letter was typed, that letter was typed during the noon hour of Friday, August 31, 1945.

* * * * *

Mr. Townsend: Do you remember what time you mailed those letters?

Mr. Segal: To the O.P.A.?

Mr. Townsend: To the O.P.A. and the St. Dennis'.

Mr. Segal: To the St. Dennis' that was mailed at what is known as the Traffic Station of the Post Office located at

704 Marquette Avenue and that was posted there along about in the middle part of the afternoon of Friday, August 31st.

* * * * *

Mr. Segal: And then we offer Plaintiff's Exhibit B in evidence, Your Honor, as the carbon copy of the letter, the original of which was sent to the defendant, Joseph St. Dennis, and also a carbon copy also which was sent to the O.P.A. Rent Control office in the National Building, in the City of Minneapolis. With reference to Plaintiff's Exhibit One, that was addressed and prepared by me and mailed and is the envelope in which the notice was sent to the St. Dennis'; that was mailed at the Traffic Station in the City of Minneapolis on the afternoon of August 31, 1945, by registered mail special delivery and we offer the envelope which is Defendant's Exhibit One in evidence.

The Court: I am not satisfied with this, there is a claim on the one hand she got this on the 4th; this carbon copy would indicate to me it was delivered on the—

Mr. Townsend: (interrupting) There is something conflicting.

The Court: (continuing) Isn't it possible for the post office, this special delivery agent must have records.

Mr. Townsend: They do.

The Court: Isn't it possible to find out when that was delivered?

Mr. Townsend: I think we can also show, Your Honor, further conflict, if I could cross-examine Mr. Segal for a moment.

Mr. Segal: Sure, go right ahead. The conflict is, it is on the part of the defendant's witness as to the—if there is any conflict it is on the part of the defendant's witness by saying she got it on September 4th when the card definitely shows it was mailed and postmarked September 1st before she ever received this card.

The Court: I don't know when that date, here is this—

Mr. Segal: (interrupting) You mean there may be some doubt in your mind about the day that they delivered?

The Court: I don't know.

Mr. Townsend: It may be that the card is filled out and the man takes it along with him when he delivers it.

The Court: It looks to me like there might have been a change then.

Mr. Townsend: That's obvious, Your Honor, nine written and then there is an eight.

Mr. Litman: The witness testified that she has received it and it is signed for by the agent.

Mr. Segal: She may have substituted on that.

The Court: Please, counsel.

Mr. Litman: The inference is there that she signed for or she said it was delivered to her personally by the mailman.

* * * * *

(Two o'clock p.m., October 11, 1945, cause continued to this date, all appearances as previously noted, at which time the following proceedings were had.)

The Court: The Court will direct that the witness testify with reference to delivery of a special delivery.

MR. JOHN M. SICORA, a witness, called on behalf of the defendant, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Townsend:

Q. What was your name, I didn't hear?

A. Sicora, John M.

Q. Mr. Sicora, you were subpoenaed here, weren't you, by both plaintiff and defendant in this action?

A. Well, I don't know much about legal matters, there is two subpoenaes.

Q. Do you have with you the postal records pertaining to the special delivery of a registered letter No. 7158?

A. Yes, sir.

Q. Will you produce that please?

A. How do you want me to go about this? Do you want the procedure we go through?

* * * * *

The Court: We are interested in the date of the delivery.

Mr. Townsend: Will you produce your records, please, if counsel wants to take a long time in this.

Q. (Mr. Townsend) Do you know what the records show as to the delivery of the special delivery No. 7158?

A. The records show it was given to the messenger on September 1st, he left at 7:25 and he delivered the letter at 7:48 a.m., at 1316 13th Avenue South.

Q. That's all.

The Court: That is fairly clear that was delivered on the first day of September.

Mr. Segal: But then that pencil—

The Court: Is this card marked August 31st? There is enough here to make a finding that that was delivered on the morning of September 1st, that's what I am going to find.

Mr. Segal: This defendant comes in here and deliberately perjures herself in this court.

Mr. Townsend: Just a moment.

The Court: We have a card that indicates it is changed, this has been erased, I don't think we'll say anything about any perjury.

Mr. Segal: I am willing to stand on the testimony and the evidence, Your Honor, there has been some changes on

some of these things and then on that red—or yellow card, I don't know but it looks—

The Court: This exhibit, this record, Defendant's Exhibit Four, which shows the delivery at 7:48 on the morning of September 1st.

Mr. Segal: I don't know unless he gets the delivery the night before and makes his return the following morning. Here you have one handwriting, the date is—apparently there has been some changes, it is in different pencil, there is something wrong with this.

The Court: What about this one, what about this record?

Mr. Segal: That is made after the delivery, the following day.

The Court: That is not, no, no, here is—this is the signature of the addressee of the letter, isn't it?

The Witness: That is the signature of the person that accepted the letter.

The Court: Yes, that's the address of the lady that signs on this, yes, that isn't made up on some subsequent time?

The Witness: No.

* * * * * *

The Court: We are wasting time on this, I definitely will hold this notice was not served in time. You want to dismiss without prejudice or do you want a finding?

Mr. Townsend: I move for a finding, Your Honor, and taxation of costs.

LETTER FROM G. W. TOWNSEND WITH REFERENCE TO THE MAX HERMANN VS. JOSEPH ST. DENNIS CASE

November 30, 1945

Mr. George W. Tanner
Chairman, Ethics Committee
Hennepin County Bar Association
1114 Northwestern Bank Bldg.
Minneapolis, Minnesota

Dear Sir:

I am bringing to your attention, as Chairman of the Ethics Committee of the Hennepin County Bar Association, a matter at the instance of Judge LaBelle, who feels that the matter should be investigated thoroughly.

On October 9, 1945 I represented the defendant in an unlawful detainer action entitled: Max Hermann v. Joseph St. Dennis. The plaintiff in that action was represented by attorney A. Ray Segal. It appeared from the facts that the important question had to do with whether or not the defendant received notice to vacate within the time required by local law. That time would have expired at midnight August 31, 1945. The defendant denied receiving the notice until after September 1, 1945 or thereabouts. The plaintiff offered in evidence and it was accepted as Plaintiff's Exhibit "A," a Return Receipt in the form commonly used by the post office in showing delivery of registered mail. It was pointed out by me to the court that apparently the date of delivery had been altered, bearing in mind that it was necessary that the registered letter be delivered on 8-31-45. The date of delivery shows that date, but it is obvious that it has been altered, and such was the opinion of Judge LaBelle. I enclose this Return Receipt for your file, it having been withdrawn from the file by me, with Judge LaBelle's permission. It will be observed that the "9" which was origi-

nally written has been re-written to read "8" and a "w" has been put in front of the numeral "1," indicating delivery 8-31.

Because of this obvious conflict in testimony Judge LaBelle ordered the case continued until the following Tuesday at 2:00 p.m. In the meantime, inasmuch as Segal had testified under oath that he had mailed the notice in question at the post office branch at 704 Marquette in the middle of the afternoon of August 31st, I investigated and found that the letter had actually been mailed within a very few minutes of closing time, my recollection being 5:57 p.m., August 31st.

I then went to the Main Post Office, and after investigation and inquiry there determined that the letter had actually been delivered at 7:58 a.m. on September 1, 1945. On the strength of that the post office was subpoenaed and a witness of the post office testified from the records and brought into court by him, that delivery had been made as indicated, namely, 9-1-45 at 7:57 or 7:58 a.m. There were several documents in the hands of the post office which verified this information, so that it was obvious that the Return Receipt had in fact been altered.

At the second hearing in this matter Mr. Segal then attempted, in the words of Judge LaBelle, "to throw a smoke screen around himself" by accusing my client of perjury or attempting to so accuse her. It was obvious that the Return Receipt had not been in anyone's hands other than Mr. Segal's from the time it was returned to him by the post office until it was produced by him in court. It would appear from the transcript of testimony, which I enclose, as to the first hearing that apparently Mr. Segal has perjured himself as well as committing perjury. I am advised by Judge LaBelle that the other testimony which was taken at the second hearing will be transcribed and made available to me the first part of next week, at which time I will procure it and deliver it to you. Inasmuch as Judge LaBelle ordered both of these transcripts and they are his property, they must be returned to him.

Judge LaBelle has indicated very definitely that he will appear before the Committee, as will I, in presenting evidence to the Committee of the matters contained herein.

I am enclosing also the special delivery envelope in which the notice to vacate was enclosed, marked, Defendant's Exhibit I, from which you will be definitely able to ascertain the time that it was mailed.

I realize that considerable time has elapsed since these events occurred, but the press of business has prompted me to procrastinate somewhat. I was advised, however, by Judge LaBelle today that had I not brought this matter to your attention he would have done so.

Yours very truly,

G. W. TOWNSEND

GWT:VD
Encls.

DEFENDANT'S EXHIBIT A

May 21, 1953
Minneapolis, Minnesota

I, Mary Katherine Johnson, make the following voluntary statement to Special Agents James J. Duggan and B. Harry Wynn who have identified themselves to me as Special Agents of the Federal Bureau of Investigation. No threats, promises, or inducements have been made to make this statement, and I have been advised that whatever I say can be used against me in court. I have also been advised of my right to counsel, and I do not care to have an attorney present when this statement is made.

My name is Mary Catherine Johnson. I am 19 years of age. My family's home is 1252 Hubbard Ave. in St. Paul, and I have completed 11 years of school.

On or about November 1, 1952 at approximately 12:00M at Olson Highway and Aldrich Ave. in Minneapolis, I met

Donald Nelson after he had finished his turn at driving a cab for the yellow-cab Co. I met Don Nelson and we went into Ampy's tavern, Olson Highway and Aldrich Ave. where we ate and it was at this time that I requested him to take me to Chicago, Ill. Don knew that I was a prostitute as I had, upon many occasions, discussed my hustling with him.

Nelson and I were later joined by Becky Arons, a prostitute, (colored) who lived with Don Nelson and another man whose name I do not choose to mention. We four then discussed the trip and we finally agreed to go and to pay Nelson, twenty-five dollars plus gas. We left Minneapolis around 5:00 am in Nelson's 1952 Buick Special, red in color. We thought the police were following us so we four, Becky Arons, Nelson, myself, and the fourth fellow drove very slowly for a time. In St. Paul we stopped at a gas station on Kellogg St. and had some difficulty with the operator as neither of us wanted to pay for the gas and as a result the operator of the station called the police and the police talked to us.

We left St. Paul around 6:00 am and we headed toward Chicago with Nelson driving. We travelled slowly as we thought we were being followed by the police and Nelson was real careful and drove around for some time before we drove across the state line. Nelson made sure that we were not being followed before we crossed into Wisconsin.

On the trip Nelson kept asking us for the rest of the money which we refused to give him until we got to Chicago. We did not intend to pay him so we, meaning my friend and I, kept giving him Marijuana (reefer) cigarettes and Don and Becky discussed the possibility of them staying a few days in Chicago whereby Becky could turn some tricks. Becky had hustled in Chicago before and knew the town.

We four traveled to a little town about 100 miles from Chicago when Nelson told us to get out as he knew by this time that we were not going to pay him for the trip. My

friend and I got out of Nelson's car and caught a bus to Chicago. The trip cost us approximately $4.00 a piece from this little town in Wisconsin to Chicago. To the best of my knowledge, Nelson and Becky drove back to Minneapolis.

We did not pay Nelson for this trip and this was the only time I had ever gone anyplace with him.

I have read the foregoing statement consisting of 3 pages and have initialed each page and correction.

MARY KATHERINE JOHNSON

Witnessed by:
B. Harry Wynn, Special Agent, F.B.I.
Minneapolis, Minn., 5-21-53
James J. Duggan, Special Agent, F.B.I.
Minneapolis, Minn., 5-21-53

No. 551

Office - Supreme Court, U.S.
FILED
OCT 14 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1957

A. RAY SEGAL,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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IN THE

Supreme Court of the United States

October Term, 1957

A. RAY SEGAL,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

A. Ray Segal prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in the above entitled case on August 6, 1957.

CITATIONS TO OPINIONS BELOW

The memorandum opinion of the District Court (R. 163-167), printed in Appendix B hereto, *infra*, p. 21, is reported in 147 F. Supp. 506. The opinion of the Court of Appeals printed in Appendix B hereto, *infra* p. 26, is reported in 246 F. 2d 814.

JURISDICTION

The judgment of the Court of Appeals was entered on August 6, 1967, p. 41, *infra*. A timely petition for rehearing was denied September 13, 1957. The jurisdiction of this court is invoked under 28 U.S.C., Sec. 1254 (1) and Sup. Ct. Rule 23(2).

QUESTIONS PRESENTED

1. Whether petitioner was denied his constitutional right to a fair trial because the trial court permitted, over his objection, witnesses, who testified for the petitioner in respect to his reputation for truth and veracity, to be asked on cross-examination whether they had heard ". . . . . anything about the proceedings in the case of Max Herman against Joseph St. Dennis, which was in Municipal Court, City of Minneapolis, in *October 1955*, and have you heard whether in that trial the defendant, Mr. A. Ray Segal, presented to the Court and offered in evidence a card registered mail postal receipt in which it appeared that the date on the receipt had been rewritten from the time it had first been written, as to date, and that thereafter the postal authorities here in the City of Minneapolis testified that the date that was then apparently the date, the rewritten date on the card as offered in evidence, was an earlier date than the records of the Minneapolis Post Office Department, as testified to in that case showed. That thereafter Mr. Segal representing the plaintiff, whose case depended on the receipt, the claim of having been received on the date shown in the altered date, Mr. Segal then moved for dismissal of the case. Have you heard about that?"

2. Whether petitioner was denied his constitutional right to a fair trial because the trial court permitted, over his objection, testimony tending to show a subsequent attempt on the part of petitioner to commit a like separate offense.

STATEMENT OF THE CASE

Petitioner, at the time of his trial was a 59 year old native of Minneapolis who had been a practicing attorney in that city since 1932. (R. 98).

He was one of two attorneys who had represented one Nelson who had been charged with a violation of the Mann Act and tried in the U. S. District Court for the District of Minnesota in the latter part of 1953. In February of 1956 petitioner was charged under 18 U.S.C., Sec. 1622 with suborning perjury on the part of the woman Nelson had been charged with transporting. (R. 5-12). In the Nelson case she had been a government witness. (R. 21).

Petitioner pleaded not guilty and was tried and convicted in the spring of 1956. That verdict was set aside by the trial court and petitioner was granted a new trial (R. 3). The new trial again resulted in a conviction on October 24, 1956 (R. 156). Petitioner's motions for judgment of acquittal and for new trial were denied January 24, 1957 (R. 163-167), Appendix B hereto, *infra*, p. 21, 147 F. Supp. 506. Petitioner was thereupon committed to the custody of the Attorney General for a period of eighteen months and fined $2,000.00 (R. 167, 168). On appeal the conviction was affirmed by the Court of Appeals for the Eighth Circuit, Appendix B hereto, *infra*, p. 26. A timely motion for a rehearing was denied September 13, 1957. (Appendix C, *infra*, p. 42).

Every government witness whose testimony against petitioner bore directly upon the question of whether petitioner suborned perjury in the old Nelson trial was a narcotic addict, prostitute, or a convicted felon (R. 21, 22, 25, 43, 54, 63, 67). Petitioner became a witness in his own defense (R. 98). He, under oath, denied ever suborning the woman to testify falsely and ever making any statement to another that might be construed as an admission of so doing (R. 98-116). His reputation for truth and veracity thus became material, and, among others, he called seven Minneapolis attorneys to testify to the excellence thereof (R. 117, 121-123, 126, 127).

During the cross-examination of the first of these, Irving C. Iverson, counsel for the government approached the bench and stated to the court that he intended to ask the witness whether the witness had heard that in 1945, Judge LaBelle of the Municipal Court of Minneapolis had directed an attorney to report to the Hennepin County Bar Association Ethics Committee that an investigation should be conducted in regard to Petitioner having perjured himself in that he had presented to the court a post-office form receipt for registered delivery, which had been in petitioner's possession from the time it was delivered by the post-office until presented to the court, and upon which the date had been altered, and that there was conflict between petitioner's testimony and post-office records as to the time of day the letter was mailed (R. 118). Counsel for the government then handed the court a volume containing *Michelson v. United States*, (335 U.S. 469, 69 S. Ct. 213, 93 L. Ed. 168) together with a paper purporting to be a copy of a letter counsel stated was written November 30, 1945 by the attorney referred to and addressed to the Ethics Committee. Counsel

for the government also handed to the court the transcript of the 1945 trial (R. 119). Neither document was offered in evidence nor was any testimony taken to support their authenticity (R. 119). The letter was printed by the government and submitted to the Court of Appeals in connection with petitioner's appeal (Supplemental Record 53-55). The government also printed and submitted to the Court of Appeals portions of the transcript of the Hermann trial (S.R. 46-52). The whole of the transcript was printed and submitted to the Court of Appeals by petitioner in connection with his petition for rehearing (R. Petition for Rehearing 39-56).

The transcript contains *no* evidence that petitioner made any change in the date which appeared on the postal receipt card, nor that the Municipal Court requested the matter be referred to the Ethics Committee. It does contain evidence that the registered letter was given to the postal messenger for delivery on August 31, 1945 (Pet. for Rehear. 48, 49) returned undelivered, and was actually delivered at 7:48 A.M. on September 1, 1945 (Pet. for Rehear. 48, 49, 47). Actual delivery of the letter on the latter rather than the former date warranted judgment against rather than for petitioner's client and the Municipal Court, therefore, suggested, for petitioner's benefit, the motion for dismissal mentioned in the last part of the question put to petitioner's character witnesses (Pet. for Rehear. 55, 56).

The copy of the letter, while accusatory of petitioner, contains the following statement:

> "It will be observed that the '9' which was originally written has been re-written to read '8' *and a '1' has been put in front of the numeral '1,'* indicating delivery 8-31" (S.R. 53, 54).

Objection was made to the proposed question to the character witnesses on the grounds that it would be prejudicial, require a trial on a collateral matter, was too remote in time, and would convey to the jury by implication that petitioner did something wrong on that occasion (R. 119, 120). The objection was overruled and counsel for petitioner were asked whether they wanted the court to give a cautionary instruction taken verbatim from *Michelson, supra*. Petitioner's attorneys assented and the instuction was given at that time (R. 120). Thereupon counsel for the government asked Mr. Iverson the question quoted in question 1, *infra*, p. 2. The same question, in almost identical language, was asked of five additional character witnesses. In each instance the witness answered in the negative (R. 121-124, 127).

In his opening statement to the jury at the commencement of petitioner's trial, the Assistant United States Attorney stated that he expected the evidence would show that sometime later on a man by the name of Godfrey Lee Barrett was indicted for the same type of offense as that with which Nelson was charged. At that point counsel for petitioner interrupted to object to any reference to or testimony concerning the Godfrey Lee Barrett case on the ground that it was irrelevant, immaterial and highly prejudicial. The objection was overruled and the Assistant District Attorney continued with a brief description of the facts in the Barrett case (R. 12-14).

Pursuing the Barrett case the government called Shelly Warren who testified that she came to Minneapolis from Pontiac, Michigan in June of 1955 (about a year and a half after the date of the alleged commission by the petitioner of the offense of which he was convicted (R. 5). She was

accompanied by Godfrey Lee Barrett and Lovie Barrett, step-brother and sister. She was twenty-nine years of age and had been a prostitute since 1947. She was asked how long she had known Barrett before leaving Michigan. An objection on the ground of irrelevance and immateriality was interposed and overruled. She was thereafter asked specific questions by the Assistant United States District Attorney which developed the details of her travels through several states and her stops in various cities, all in company with Godfrey Lee Barrett, during which time she engaged in prostitution and Barrett lived off her earnings (R. 53-54).

When she was asked whether she had a conversation with petitioner regarding Barrett's having been arrested, an objection was again interposed on the ground of irrelevance and immateriality. It was overruled. She answered that petitioner had said that Barrett was in jail on a charge of white slavery and that if she did as petitioner told her to do there would never be any trial and she didn't have anything to worry about. A motion by defense counsel that the answer be stricken on the ground that it was highly prejudicial and wholly irrelevant and immaterial was denied. She was then asked what petitioner had said in regard to what she should say. She replied that she was only told not to answer any questions that the F.B.I. asked her. Defense counsel then asked the court whether it was understood that he had an objection to all of this line of testimony as highly prejudicial. The court assented (R. 55, 56).

The witness then went on to testify that she had been mixed up and that petitioner had instructed her not to answer any questions put by the F.B.I. upon a different occasion and that upon the occasion referred to by the Assistant District Attorney petitioner told her how to answer any

question in the event she had to go to trial as a witness against Barrett. She was then asked what petitioner told her in regard to *testifying pursuant to a government subpoena*. Objection was again made upon the same grounds. There was the same ruling. She answered:

> "He told me that I was never to admit to the Grand Jury that I had ever had intercourse with Godfrey Barrett, I had ever given him any money, I had ever traveled for the purposes of prostitution, that I had only traveled on a share the expense plan and that all of us shared expenses, I had received money from my mother in ordinary mail, that I had worked at various places under aliases which I couldn't remember, because the places I worked I hadn't stayed long enough, only until I was asked for a Social Security card, that if I did that, I would never have to go to trial because I was the main witness for Barrett and that if I did that there wouldn't be any trial. And I asked him if he was going to go with me to Springfield, because I was subpoenaed to Springfield and he said it would never reach there, and he told me he defended a girl named Mary Johnson successfully in a similar case and she had listened to him and the case had been beaten, and said that he told her to say that she worked at Spiegel's Mail Order House for two months, and that she testified in that manner and, whatever the case was, was never—they beat the case anyway." (R. 56, 57).

She was then asked whether she had had any conversation with petitioner in regard to the trip itself from Michigan to Minnesota. The same objection was made and the same ruling handed down. She replied that there was none other than that she was to say that the trip was taken to seek employment and that she was sharing expenses. She was asked whether she had said anything to petitioner about

her employment or about how the expenses were paid. She replied that she had told petitioner that she was frightened of Grand Jury action because she had been arrested for prostitution and had pleaded guilty (R. 57).

The fact of the matter is that she did not testify at all. Barrett pleaded guilty upon advice of petitioner. (R. 103).

On the same trial day and while the witness was still under cross-examination, the petitioner, in chambers, moved for a mistrial on the ground that what she claimed petitioner advised her to do or testify in the Barrett case was irrelevant, immaterial and highly prejudicial. The motion was denied. A motion to strike on the same ground was taken under advisement (R. 58-60). It was later denied (R. 128, 129).

Over the same objection, again overruled, Lovie D. Barrett was permitted to testify for the prosecution that she traveled from Saginaw, Michigan to Milwaukee and then to the Twin Cities on June 7, 1955, in the company of Barrett and Shelly Warren. After they arrived in Minneapolis, Barrett and and Shelly were arrested (R. 61).

The United States Marshal was called to testify for the government only to the effect that Barrett was a prisoner under his control at one time, having been apprehended September 19, 1955. The trial court agreed with counsel for petitioner that the previously made objections applied also to the Marshal's testimony.

Government's Exhibit 6, the Information charging Barrett with Violation of the Mann Act, was received over the same objection (R. 62).

REASONS FOR GRANTING THE WRIT

1. The decision below is in conflict in principle with *Michelson v. United States*, 335 U.S. 469, 69 S. Ct. 213, 93 L. Ed. 168 (1948) in that:

(a) The question asked of the character witnesses embodied an ambiguous statement of facts, and neither an affirmative nor a negative answer by the witness could in any way test or discredit his testimony on direct examination, while at the same time the jury could and almost certainly did infer wrongdoing or meretricious conduct on the part of petitioner.

(b) The trial court abused its discretion in permitting the question to be asked: in the absence of any competent evidence that the incident had ever occurred for neither was any testimony taken, nor were either the transcript or the letter offered in evidence; in the absence of any evidence in the Hermann transcript that petitioner changed or had any connection with changing the date involved; and in the face of the statement, supra, in the letter negativing a change in the identity of the day of the month from a later to an earlier one.

2. The court below had, prior to *Michelson, supra*, held that it was reversible error for the trial court to permit a character witness to be asked whether he'd heard of circumstances, ambiguous in character, which would not clearly, had they been the subject of conversation, have adversely affected defendant's reputation.

Sloan v. U. S., 31 F. 2d 920
Spalitto v. U. S., 39 F. 2d 782
Peightel v. U. S., 19 F. 2d 235

The effect of the decision below is to abrogate that salutary rule in the Eighth Circuit, apparently upon the mistaken theory that *Michelson, supra*, requires or authorizes it (Appendix B, *infra*, p. 36).

3. Petitioner has been deprived of his basic constitutional right to a fair trial under the Due Process Clause of the Fifth Amendment because the jury certainly inferred wrong doing on the part of the defendant from the improper questions asked his character witnesses; and because the trial court admitted evidence over his objection, tending to prove that petitioner had instructed Shelly Warren, a woman transported in a separate, unrelated but similar transaction, to testify falsely (R. 56).

Because of the apparent over-extension and misinterpretation of *Michelson, supra;* because neither this court nor Appellate Courts, generally, have laid down any standards for trial courts to use in judging the quality or quantity of material submitted to them as a basis or foundation for cross-examination of character witnesses; and because of the ever present tendency, too often condoned by courts, on the part of prosecutors to seek to convey to jurors, directly or indirectly, claims that defendants have not led otherwise blameless lives, the writ is appropriate in these proceedings.

1. The question put to character witnesses.

Prior to *Michelson, supra*, the Eighth Circuit had consistently held that it was improper, and reversible error, for the prosecution to put to character witnesses questions which contained ambiguous statements of fact rather than any

direct charge, and which could not be valid impeachment of the character witness.

Sloan v. U. S., 31 F. 2d 902
Spalitto v. U. S., 39 F. 2d 782
Peightel v. U. S., 49 F. 2d 235

Spalitto, supra, thoroughly discussed the subject of cross-examination of character witnesses and quoted at length from many texts. One such, quoted with approval, was Wigmore to the effect that:

". . . . . When witness A is called to support the character of B (either a witness or an accused), by testifying to his good reputation, that reputation must signify the general and unqualified consensus of opinion in the community (post Secs. 1610-1614). Such a witness virtually asserts either (a) that he has never heard any ill spoken of him or (b) that the sum of the expressed opinion of him is favorable. Now if it appears that this sustaining Witness knows of bad rumors against the other, then, in the first instance, his assertion is entirely discredited, while, in the second instance, his assertion is deficient in good grounds, according to the greater or less prevalence of the rumors. On this principle, then, it is proper to probe the asserted reputation by learning whether such rumors have come to the witness' knowledge; for if they have, it is apparent that the alleged reputation is more or less a fabrication of his own mind. It is to be noted that the inquiry is always directed to the witness' hearing of the disparaging rumor as negativing the reputation. *There must be no question as to the fact of the misconduct, or the rule against particular facts would be violated; and it is this distinction that the Courts are constantly obliged to enforce.*" (Italics supplied.)

In the same opinion *Sloan*, *supra*, was distinguished as follows:

> ". . . . . On cross-examination they were asked if they had read a newspaper statement that officers had found whisky, false whisky labels, empty bottles, and counterfeit revenue stamps in the defendant's room. The questions, in this form, did not refer to any charge or rumor against the defendant, but to the ambiguous fact that articles had been found in his room. The reading of such an account would not be in refutation of the witnesses' testimony that the defendant's reputation had been good."

It seems obvious that it makes no difference whether the adverse information concerning the accused reached the witness through his ears or through his eyes. In either event the effect upon his testimony upon direct examination should be the same. The real distinguishing feature is the *ambiguous* nature of the information. For one could conclude only by inference that the information imputed wrong doing to the accused.

In *Pieghtel*, *supra*, later decided, the charge was that the accused had wilfully misapplied funds of his employer, a banking association. His character witnesses were repeatedly asked whether they did not know that he was indebted to his bank in a substantial sum at the time the bank closed. The court held that the fact, if it were a fact, was proof neither of bad character nor of guilt of the offense charged and while no such knowledge on the part of any witness was elicited, the questions were prejudicial and the objections to them should have been sustained.

Apparently, therefore, the Eighth Circuit has abandoned its position that the question cannot pose to the witness an ambiguous state of purported facts not clearly reflecting

upon the character of the accused, but having only a prejudicial effect upon the defendant before the jury because it held, in reliance upon *Michelson, supra*, in sustaining the propriety of the question asked here that a witness can be asked whether he ever heard of an incident that "*might* have a bearing upon his good reputation". (Italics supplied) (Appendix B, *infra*, p. 36). The trial court had also relied upon *Michelson* (R. 119).

A careful examination of *Michelson, supra*, does not disclose that anywhere in it did this court state or infer that it was proper for the prosecution to ask a question embodying a statement of purported facts which, if bruited about in the form in which asked, could not possibly have affected a defendant's reputation. On the contrary, the general tenor of *Michelson* was to accept existing law, which included disapproval of questions asked so as to detail evidence or circumstances of misconduct on the part of the accused (Loc. Cit. U.S. 480, L. Ed. 176, note 17). *Michelson* has since been held to mark out the extreme limits of permissible cross-examination. *Roberson v. U.S.*, 237 F. 2d. 536 (U.S. C.A. 5th 1956). There is nothing in the question asked here (*infra*, p. 2), which tested the witness' foundation for his testimony.

The question served one purpose, and one purpose only, and that was to convey to the jury, not directly, but by implication and innuendo, the idea that the prosecutor, and the court, because it permitted the question to be asked, were of the opinion that petitioner had participated in the wrongful forging of an important document in another case.

In *Michelson, supra*, this court recognized the danger in such proceedings when the question asked was a proper one and could affect the direct testimony of the character

witnesses. It approved the cautionary instructions there given, nevertheless realizing that the instruction was of doubtful value in removing from the minds of the jury the damage done defendant as a by-product of the asking of a proper question. Here the question served no valid purpose. Unfair damage to the defendant could be the only result of its being asked.

Neither does *Michelson, supra,* support the proposition that counsel for the government can inquire about an incident which occurred over eleven years previously. No objection on that basis had been taken by the petitioner in *Michelson*, as the court there pointed out. Here such objection was made (R. 119). Other cases have held it reversible error to permit cross-examination referring to events which occurred eight, ten and twelve years prior to the time of the trial.

State v. Bell, 206 Ia. 816, 221 N.W. 521

Nuchols v. Commonwealth, 312 Ky. 171, 226 S.W. 2d 796

Again in *Michelson*, this court required that trial courts become satisfied by demonstration privately by government counsel that the event concerning which the witness is to be asked actually took place. Presumably the court meant not just any ambiguous event, but an event which, if narrated, would adversely affect a defendant's reputation. It is difficult to believe that this court meant that that requirement would be satisfied merely upon the prosecutor's statement that it occurred. Prosecutors are human and can be misled by others. It would seem basic and vital to all defendants that they be protected by requiring at least that the demonstration of the reality of the event be based upon the

oath of someone who claims to have first hand knowledge of its occurrence or, at the very least, an officially certified record of the event. Here petitioner was subjected to this terribly damaging question solely upon the statement of government counsel who clearly had no first hand knowledge of the Hermann case. The transcript and the letter were not offered and no testimony was elicited. The prosecutor's own doubts about the validity of any charge that petitioner had had to do with the falsification of any record in the Hermann case are clearly expressed in the terms of the question that he put to the character witness. He was apparently unwilling to ask the character witness a direct question embodying a charge of specific wrong doing. A complete copy of the transcript of the Hermann trial handed the court by government counsel, which appears beginning at page 39 of the Petition by Appellant for Rehearing before the Court of Appeals, fails to justify or support in any material way any charge that petitioner had to do with the changing of the entries on any document there involved. It does support the proposition that there might well have been a legitimate routine change of date, upon a post-office receipt form, made by a postal employee, because the registered letter went out for delivery on the evening of August 31, was returned and was not actually delivered until the morning of September 1st. (Pet. for Rehear. 48, 47). Strikingly enough, the government in printing its Supplemental Record in connection with the appeal omitted the portions of the testimony of the postal employee which had to do with the abortive attempted delivery on August 31 (S. R. 50-52). Neither that transcript nor any other facts in any form presented to the trial court here warranted the clear implication conveyed to the jury by the question put to petitioner's charac-

ter witnesses, that the petitioner had moved for a dismissal of the Hermann case because of any wrong doing on his part. The dismissal was invited by the Municipal Judge in the interests of petitioner's then client because the alternative was the entry of judgment against the client. The court was apparently satisfied from post office records that the missive had been delivered on September 1st rather than August 31st.

The whole of the petitioner's client's case before the Municipal Court of the City of Minneapolis depended upon whether an eviction letter was delivered on the 31st day of August. If it were not delivered until September 1st, petitioner's client's case failed. If a "w" appeared on the postal receipt form in front of the figure "1" representing the day of the month, then either that change was completely meaningless, or the "w" was placed over a figure "3". If it were superimposed over a figure "3", it clearly indicated a change adverse to the interests of petitioner and his client, in conformity with clear and certain evidence in the Hermann case that the letter was taken out for delivery on the 31st but not actually delivered until the first of September. It is, therefore, reasonable to say that the copy of a letter handed to the trial court here, taken by its four corners, did not clearly support a claim that an event occurred which, if discussed in the community, would have had an adverse effect upon petitioner's reputation for truth and veracity.

2. Evidence tending to show a like separate offense.

The government deliberately set out to prove that petitioner had attempted to commit a like separate offense in connection with the government's case against Godfrey Lee Barrett. Every question asked of some three witnesses, Shelly Warren, Lovie D. Barrett and C. Ennard Erickson

was so designed. Even the indictment against Barrett was offered and received. The procedure was precisely that thoroughly disapproved and which resulted in a reversal in *Boyd vs. U. S.*, 142 U.S. 450, 12 S. Ct. 292, 35 L. Ed. 1077. Even the portion of the conversation with petitioner, claimed by Shelly Warren to have referred to the matter for which the petitioner was being tried was elicited from her as the result of a question directed by government counsel to the circumstances of the collateral Barrett case. Although the objection to testimony concerning the Barrett transaction, as distinct from testimony bearing upon subornation of Mary K. Johnson, was clearly made to the trial court (*infra*, p. 6-9) and was again clearly presented to the Court of Appeals, it seems that the Court of Appeals misunderstood and misconceived petitioner's position. (Appendix B, *infra*, p. 32). No complaint was at any time made, nor is now being made of that portion of Warren's testimony concerning what she claimed petitioner had said to her about his transaction with Mary K. Johnson, except that it didn't happen (R. 102, 103).

The rule in *Boyd*, *supra*, is almost universally applied and particularly previously in the Eighth Circuit. *Grantello v. U. S.*, 3 F. 2d 117 (U.S.C.A. 8th); *Niederluecke v. U. S.*, 21 F. 2d 511, (U.S.C.A. 8th); *Kempke v. U. S.*, 151 F. 2d 680, (U.S.C.A. 8th); *Hartman v. U.S.*, 215 F. 2d 386, (U.S.C.A. 8th); *Kraft v. U. S.*, 238 F. 2d 794, (U.S.C.A. 8th); *State v. Friend*, 151 Minn. 138, 186 N.W. 241; *Railton v. U. S.*, 127 F. 2d 691 (U.S.C.A. 5th).

The rule is not changed and does not permit proof of a separate like offense merely because a portion or all of such evidence is claimed to have been a part of an extra judicial statement made by an accused, unless it is *impossible* to sepa-

rate the relevant material from the prejudicial collateral material. *22 C.J.S. Crim. Law*, Sec. 735, p. 1267; *22 C.J.S. Crim. Law*, Sec. 820, pp. 1440, 1441; *2 Whorton, Crim. Evid., 12th Ed.*, Sec. 361, p. 74; *Underhill, Crim. Evid., 4th Ed.*, Sec. 265, p. 513; *20 Am. Jur., Evidence*, Sec. 489, p. 426; *Commonwealth v. Campbell*, 155 Mass. 537, 30 N.E. 72; *Rounds v. State*, 171 Tenn. 511, 106 S.W. 2d 212; *Martinez v. State*, 130 Tex. Cr. 51, 134 S.W. 2d 276; *Stagemeyer v. State*, 113 Nebr. 9, 273 N.W. 824; *People v. Infantino*, 230 N.Y.S. 66, 224 App. Div. 193; *Brown v. State*, 232 Ind. 227, 111 N.E. 2d 808; *State v. Nagy*, 27 N.J.S. 1, 98 A. 2d 613; *State v. Wolff*, 337 Mo. 1007, 87 S.W. 436.

Here the government directed all of its efforts toward proving the collateral matter to the substantial prejudice of petitioner. Even the relevant admissible portion of the conversation was only accidentally narrated by Shelly Warren in response to a question which called for an answer concerning what petitioner told her to testify to in the Barrett case. The same deliberate effort to convince the jury by implication and innuendo that petitioner had forced a document in the Hermann case is apparent from the question asked of the character witness (*infra*, p. 2).

The facts and issues presented herein were properly presented to the court below, except for the challenge to the sufficiency of the transcript and copy of the letter as a foundation for the question asked of the character witnesses. As indicated, those documents were no part of the record below and were first attempted to be made so in the government's Supplemental Record. This was improper. *U. S. ex rel. Collins v. Ashe*, 176 F. 2d 606; *Heath v. Helmick*, 173 F. 2d 156; *Washington v. U. S.*, 14 F.R.D. 221.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit should be granted.

Dated October 11, 1957.

Respectfully submitted,

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APPENDIX A

Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined not more than $2,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 774. (18 U.S.C., Sec. 1622)

APPENDIX B

(Caption)

MEMORANDUM AND ORDER DENYING DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL AND FOR A NEW TRIAL

The defendant was found guilty, by a jury, of subornation of perjury, 18 U.S.C.A. 1622, and has made timely motions for judgment of acquittal and a new trial.

Extensive oral argument was had and voluminous briefs have been filed.

I am satisfied that the evidence here amply supports the verdict. The evidence and inferences to be drawn from it must be viewed in a light most favorable to the prosecution. Rule 29, F.R.C.P., Barron, Federal Practice and Procedure, Sec. 2221, et seq. and cases cited. The motion for acquittal is denied.

The motion for a new trial is based on several grounds. The Court has considered all of the grounds urged. One of them is deserving of comment.

The defendant assigns error in the admission of evidence concerning the so-called "Doering-Aron matters." One

Rebecca Aron testified at the trial on behalf of the government. She is an admitted former prostitute. Her testimony tended to support and corroborate the testimony of the government's chief witness, Mary K. Johnson (Loveless), that she, Johnson, lied and was suborned to do so by the defendant in the white slave prosecution of one Donald Nelson in October, 1953.

The Court admitted evidence, over the objection of defendant, that was designed to show that the defendant Segal had made attempts to persuade Rebecca Aron to leave town just prior to the first trial of this case in March, 1956. Aron testified that she had received phone calls "concerning my leaving town, receiving some money to leave town or something." The government, of course, had the onus of proving that the calls emanated from Segal or his representative. From the evidence produced to connect Segal with these phone calls, the jury was clearly warranted in finding the following facts, related herein in narrative.

Aron, a colored prostitute, had been maintaining a clandestine relationship for about two years with one Herb Doering, an insurance company representative from New Ulm, Minnesota. Doering is married and has a family. Periodically, he had given Aron money and gifts. Doering apparently had some influence upon Aron, and it was this influence that interfered with Segal's attempts to secure Aron's absence from his trial. To get Doering out of the way, Segal called Doering's wife in New Ulm and told her that he, Segal, had discovered that her husband was associating with a colored prostitute. Segal told her that Doering was interfering with Segal's efforts to get Rebecca Aron to leave town. The testimony of Doering himself, Mrs. Doering, Robert Whitchurch, Doering's business superior, and

Sidney Gislason, a New Ulm lawyer to whom Mrs. Doering turned for advice on the matter, tended to establish that Segal was attempting to eliminate Aron as a witness against him and that to do so he was employing oppressive measures against Aron's illicit lover, Doering. The jury would be amply justified in drawing the necessary connection between the coercion of Herb Doering and the "anonymous" phone calls to Rebecca Aron.

The defendant contends that it was prejudicial error to admit this evidence. He states in his brief:

> "Under the provisions of Title 18 Section 1503 [U.S.C.A.] it is a felony to corruptly threaten a witness in any U. S. Court proceeding and we assume the Government was attempting to show that the defendant violated this section of the statute being an offense similar to the one charged in the Segal indictment, * * * and that such evidence was admissible to show 'intent' of Segal of the crime he was charged with."

Defendant cites, as controlling, a line of cases including *Paris v. United States*, 8 Cir., 260 F. 529; *Gart v. United States*, 8 Cir., 294 F. 66; *Edwards v. United States*, 8 Cir., 18 F. 2d 402; *Fabacher v. United States*, 5 Cir., 20 F. 2d 736; and others. The issue involved in these cases was as to the admissibility of evidence of similar offenses to show an intent to commit the crime charged.

But, these cases are not controlling here for the evidence concerning the Doering-Aron matter was not admitted on the theory that there were similar offenses involved. Impeding a government witness is, of course, a crime, 18 U.S.C.A. 1503, and there is some similarity between that crime and the offense of subornation of perjury for which Segal was tried, but, this similarity is only a fortuitous circumstance

in this case. Inducing a witness to leave town is merely another form of suppressing evidence. An attempt by a defendant to suppress evidence leads to the conclusion that the evidence would be unfavorable to him. This is evidence of guilt and, as such, relevant. This is the theory upon which it is admissible, and it is admissible regardless of the crime charged. See *DiCarlo v. United States*, 2 Cir., 6 F. 2d 364, 368.

In *Carnahan v. United States*, 8 Cir., 35 F. 2d 96, the crime charged was conspiracy to violate the National Prohibition Act. There was evidence that a co-conspirator DeMayo had sought an attorney to get a witness to leave the country. Because of factors immaterial here, the evidence was not admissible as against Carnahan, but it was held properly admitted as against DeMayo.

In *Vause v. United States*, 2 Cir., 53 F. 2d 346, 354, evidence of conversations by witnesses with the defendant in which the defendant had told the witnesses to remain silent about his connection with the crime was held admissible. The offense charged was fraudulent use of the mails.

Although the evidence received on the Doering-Aron matter may have tended, incidentally, to show the commission of a separate crime, it was not admitted for that purpose; it was clearly relevant and competent to prove the crime with which the defendant was charged. *Bram v. United States*, 8 Cir., 226 F. 2d 858, 863; *Hardy v. United States*, 8 Cir., 199 F. 2d 704, 707.

This defendant had a fair trial. He was ably represented by two highly competent and skilled attorneys with years of experience in the field of criminal law. Both of them are former prosecuting officers. They were vigorous and adept in the defense. The defendant is himself a lawyer, well

versed and experienced, especially in the field of federal criminal law, and was able to be of great assistance in his own defense.

This is the second time a jury has found the defendant guilty. The first verdict, returned in March, 1956, was set aside by my colleague, Chief Judge Nordbye, solely "in the interest of justice," because of the unchallenged admission into evidence of irrelevant testimony pertaining to the relationship of defendant and a prostitute.

In the second trial, substantially the same evidence was introduced as was received in the first trial with the exception of the irrelevant evidence noted above. In addition, evidence of defendant's alleged attempt to impede the witness Aron, discussed previously, was received.

There is no indication of passion or prejudice practiced against the defendant. The jury, chosen without objection, represented a fair cross-section of the community. It was attentive throughout the trial. It was conscientious in the discharge of all of its duties. Its unanimous verdict was of guilt. This is a conclusion well supported by the evidence. The Court believes the record to be absent of prejudicial error. There is no reason or occasion for a new trial.

The motions are denied.

EDWARD J. DEVITT
United States District Judge

January 24, 1957

(Filed January 24, 1957.)

(OPINION)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 15,726

A. Ray Segal, Appellant, vs. United States of America, Appellee.	}	Appeal from the United States District Court for the District of Minnesota.

[August 6, 1957]

Linus J. Hammond and Richard B. Ryan for Appellant.
Clifford Janes, Assistant United States Attorney (George E. MacKinnon, United States Attorney, and Kenneth G. Owens, Assistant United States Attorney, were with him on the brief), for Appellee.

Before GARDNER, Chief Judge, and VOGEL and VAN OOSTERHOUT, Circuit Judges.

GARDNER, Chief Judge.

Appellant has appealed from a judgment and sentence of conviction on an indictment of one count charging him with the offense of subornation of perjury. The indictment charged that appellant suborned one Mary K. Johnson to commit perjury as a witness in the trial of one Donald Nelson. In that case Nelson was charged with transporting Mary K. Johnson in interstate commerce and with conspir-

ing with one Robert Bannarn to accomplish such transportation in violation of the so-called Mann Act. In the course of this opinion we shall refer to the appellant as defendant.

In the instant case defendant entered a plea of not guilty and on trial the jury returned a verdict of guilty. The verdict, however, on motion of defendant was set aside and a new trial granted. On the second trial defendant was again found guilty and his motions for judgment of acquittal and for a new trial were respectively overruled and judgment and sentence of conviction entered upon the verdict from which defendant prosecutes this appeal.

Defendant first challenges the sufficiency of the evidence to sustain the verdict.

While the indictment contained but one count and charged but one offense it contained nine separate paragraphs each dealing with a separate subject matter. The court submitted but four out of these nine subjects of perjury to the jury. If there was proof that the testimony referred to in any one of these paragraphs was false and proved to be suborned that would sustain the charge of subornation of perjury. The trial court so instructed the jury and we believe this statement of the applicable law is not controverted by defendant on this appeal.

Of the four subject matters constituting the allegedly perjured testimony given by the witness Mary K. Johnson at the Nelson trial one was that she did not engage in prostitution between November 11, 1952 and December 31, 1952 and did not hustle in Chicago, Illinois; second, that she did not use drugs as an addict in Chicago between November 11, 1952 and December 31, 1952; third, that she did not know

she crossed a state line, and fourth, that she did not see Robert Bannarn about November 11, 1952. On the trial of the defendant she testified that her testimony on these questions given at the trial of Nelson was false and she also testified that the defendant induced her to give such false testimony. The testimony was all material to the issues involved in the Nelson case.

To sustain the charge of subornation in this case there must have been proof that the testimony given by Mary K. Johnson at the Nelson trial was false and this fact can only be established by the testimony of two witnesses or by the testimony of one witness and proof of corroborating circumstances. *Hammer* v. *United States*, 271 U.S. 620; *Hashagen* v *United States*, 8 Cir., 169 F. 396; *Arena* v. *United States*, 9 Cir., 226 F.2d 227; *United States* v. *Palese*, 3 Cir., 133 F.2d 600; *Goins* v. *United States*, 4 Cir., 99 F.2d 147. The question of the quantum of corroboration required by the rule is, however, for the jury. *Weiler* v. *United States*, 323 U.S. 606; *Doan* v. *United States*, 9 Cir., 202 F.2d 674.

On the question of the corroboration of Mary K. Johnson's testimony that she testified falsely in the Nelson case that she did not engage in prostitution between November 11, 1952 and December 31, 1952, we need not go into the sordid details recited by a number of witnesses, among them officers of the Chicago police department. We have examined the testimony and find it amply corroborates the testimony of Mary K. Johnson in the present case.

On the question of the use of narcotics the testimony of Mary K. Johnson given at the trial in the instant case was corroborated by testimony of police officers and by the testimony of a Mrs. Carlson and a Mrs. Warner. We have examined it and think it clearly sufficient to go to the jury on the question of corroboration.

On the question of the falsity of Mary K. Johnson's testimony given at the Nelson trial to the effect that she did not know whether she crossed a state line, corroboration is found in the testimony of Robert Bannarn and Rebecca Aron and other related circumstances.

The falsity of Mary K. Johnson's testimony given at the Nelson trial that she had not seen Robert Bannarn in Chicago about November 11, 1952 is corroborated by the testimony of a Mrs. Bowde who testified that Mary K. Johnson lived in an apartment building owned by her in Chicago with Robert Bannarn from November 11, 1952 to December 26, 1952, and by the testimony of Robert Bannarn to the same effect.

On this phase of the case we conclude that on the four matters submitted to the jury by the court's instructions there was ample evidence, if believed by the jury, to prove beyond a reasonable doubt that Mary K. Johnson committed perjury on the trial of the Nelson case.

It remains to consider whether the testimony was sufficient to go to the jury on the question as to whether the defendant induced Mary K. Johnson to give the above noted perjured testimony. While perjury must be established by the testimony of at least two witnesses or by the testimony of one witness and proof of corroborating circumstances, it is not necessary that the act of suborning perjury be so established. *Doan* v. *United States*, supra; *Catrino* v. *United States*, 9 Cir., 176 F.2d 884; *Cohen* v. *United States*, 2 Cir., 27 F.2d 713; *United States* v. *Silverman*, 3 Cir., 106 F.2d 750; *Outlaw* v. *United States*, 5 Cir., 81 F.2d 805. Thus in *Doan* v. *United States*, supra, which involved the charge of subornation of perjury, the applicable rule is stated as follows:

"* * * This means that while it was incumbent upon the Government to prove that the testimony given by

Georgia Martin before the Grand Jury was false, and to prove that it was thus false by two independent witnesses, or by one such witness plus corroborating circumstances, yet as to the element of subornation of the perjury, that is to say, as to whether the defendant induced the commission of the perjury on her part, 'the proof is the same as in all other crimes,—proof beyond a reasonable doubt'."

In *Catrino* v. *United States,* supra, it is said, inter alia:

"In a subornation of perjury case, proof that the defendant *induced* the commission of the offense, is not subject to this requirement."

The witness Mary K. Johnson testified positively that the defendant in the instant case induced her to give this false testimony. If the jurors believed this testimony, as they manifestly did, it was sufficient to sustain the verdict. However, we find that her testimony in this regard finds corroboration in attending circumstances. There was testimony that defendant admitted to one Shelly Warren that he induced Mary K. Johnson to commit perjury in the trial of the Nelson case, and there was proof of defendant's words and acts of admission in attempting to impede the witness Rebecca Aron on the first trial of the instant case. These and other attending circumstances will be hereinafter considered in connection with the question of admissibility of evidence. The weight of the testimony and the credibility of the witnesses were questions for the jury, at least as to this element of the offense charged, and we think, viewing the evidence in a light most favorable to the government, it was ample to prove this element of the offense beyond a reasonable doubt.

The government offered in evidence certain certificates of the Clerk of the court with attached documents designated

as "Government Exhibits 3 and 4". The certificates were to the effect that the attached documents were true copies of docket entries, term minutes, Judge Nordbye's order setting aside the jury's verdict and granting motion for judgment of acquittal and the jury's verdict of guilty in the Nelson case. The offer was objected to as follows:

> "Mr. Hammond: There is no objection by the defendant as to foundation. Defendant does object to the exhibits on the ground that they are, in the main, wholly irrelevant and immaterial and they put before the jury many matters that should not be before the jury.
>
> "Mr. Ryan: As to material parts the witness can testify.
>
> "Mr. Hammond: Most of the matters in here, that are listed in here, are things wholly irrelevant and immaterial to the trial of this case. We have no objection to Mr. Chell Smith testifying to material matters.
>
> * * * * * * *
>
> "Mr. Hammond: We have the same objection on Government's Exhibit 4 on the ground that in the main the entries therein are irrelevant and immaterial to the trial of this case."

The objection was overruled. The objection was a general one and does not point out any specific grounds for excluding the testimony. This being a case involving perjury it was incumbent on the government to prove that the perjured testimony alleged to have been given in the Nelson trial was given in a competent tribunal and that such testimony was material to the cause then on trial. In 41 Am. Jur., Perjury, Sec. 64, p. 35, it is said:

> "Thus, in order to convict a person of perjury alleged to have been committed on the trial of a case in a court of record, the production of the record in that case or of a duly authenticated transcript thereof, is essential,

unless the formal proofs of such judicial proceeding are waived or dispensed with by admission or otherwise."

We do not think this general objection called to the court's attention any specific ground for excluding the evidence, and in any event it could scarcely be said to be prejudicial.

Complaint is made of the ruling of the court in admitting into evidence testimony of one Shelly Warren to the effect that defendant admitted to her that he had induced Mary K. Johnson to perjure herself in the Nelson trial. Complaint is also made of the ruling of the court in admitting into evidence testimony that defendant had attempted to impede one Rebecca Aron as a witness in the first trial of the instant case. The evidence was clearly admissible. The acts and words of the defendant were in the nature of admissions and they tended to corroborate the testimony of the witness Mary K. Johnson. Evidence of a defendant's attempt to tamper with or impede a witness is admissible as an act of admission. *Curnahan* v. *United States*, 8 Cir., 35 F.2d 96; *Wallace* v. *United States*, 7 Cir., 243 F. 300; *DiCarlo* v. *United States*, 2 Cir., 6 F.2d 364; *Vause* v. *United States*, 2 Cir., 53 F.2d 346. As this testimony was relevant and competent to prove acts in the nature of admissions of the crime charged, the mere fact that it may have tended to prove commission of another crime did not render it inadmissible. *Bram* v. *United States*, 8 Cir., 226 F.2d 585.

It is urged that the court erred in permitting the defendant to be interrogated on cross-examination on matters not referred to in his direct examination and particularly with reference to his income tax returns and with reference to whether Jimmy Baker's place was not a principal hang-out for Minneapolis prostitutes. Defendant, having taken the witness stand in his own behalf, was subject to cross-examination

to the same extent as any other witness. That cross-examination might go to any fact in issue or to the impeachment of his credibility. *United States* v. *Lowe*, 3 Cir., 234 F.2d 919; *United States* v. *Silver*, 2 Cir., 235 F.2d 375. In accounting for his presence at 707 Bradford and at a so-called "Jimmy Baker's place" in Minneapolis, Minnesota, he had offered somewhat conflicting explanations. Mary K. Johnson had testified without objection that he told her, when talking to her prior to the Nelson trial, "Now if they ask you anything about the place at 707 Bradford, I don't want you to say that I own the house." In his testimony in chief he apparently attempted to leave the impression that the only occasion for his being in these places was in his capacity as an attorney because property of a deceased client needed to be attended to for the benefit of an estate and its heirs, and to see to the collection of rents for such estate. He later admitted that he was the owner of the property at 707 Bradford, and when being interrogated as to the collection of rents he himself suggested that he could not recollect the amounts collected but that his income tax returns would show. This was the occasion for producing certain income tax reports and interrogating him with reference thereto. They were not introduced in evidence and the cross-examination went to the credibility of the witness.

Defendant was asked whether or not a so-called "Jimmy Baker's place" was not a principal hang-out for Minneapolis prostitutes. There was no objection and the witness answered, "I wouldn't know that." Thereafter, on motion of defendant's counsel, the question and answer were stricken and no prejudice could result therefrom. Apparently defendant had a clientele frequenting these places, some of whom were confessedly prostitutes. The testimony went to the

credibility of the defendant as a witness. We think it manifest that the testimony so produced on cross-examination, in view of all the other testimony in the case, could not have been prejudicial. The scope of cross-examination is to be left largely to the discretion of the trial judge and in the absence of an abuse of such discretion, or of a manifest miscarriage of justice, reversal may not be had. *Christianson* v. *United States*, 8 Cir., 226 F.2d 646; *Glasser* v. *United States*, 315 U.S. 60. The question of the scope of cross-examination was considered by us in *Christianson* v. *United States*, supra, and in the course of the opinion in that case we said:

> "Error is charged on account of the cross-examination of the Defendant Paster. The general rules of cross-examination are well defined. They need not be restated. These general rules must have some flexibility in order that they may be properly applied to the great number of varied situations which arise. To accomplish the necessary flexibility and at the same time preserve the basic and substantive objectives of these rules, a considerable area of discretion is assigned to the trial court in applying the rules to a specific situation. Such a situation must be viewed and reckoned with by the trial court in the light of all related incidents occurring during the trial and cannot be confined to an isolated question or series of questions. While the questions complained of, which the court required Paster to answer, did not in themselves tend to prove or disprove the specific charge, they were sufficiently germane to portions of Paster's direct examination and statements of his counsel as to prevent the trial court's rulings from being an abuse of discretion."

We are of the view that the scope of cross-examination of this defendant permitted by the trial court did not constitute an abuse of discretion.

The defendant produced a number of character witnesses, some of whom were engaged in the practice of law. On cross-examination certain of these lawyer witnesses were asked the following question:

> "Have you heard anything about the proceedings in the case of Max Herman against Joseph St. Dennis, which was in Municipal Court, City of Minneapolis, in October 1945, and have you heard whether in that trial the defendant, Mr. A. Ray Segal, presented to the Court and offered in evidence a card registered mail postal receipt in which it appeared that the date on the receipt had been rewritten from the time it had first been written, as to date, and that thereafter the postal authorities here in the City of Minneapolis testified that the date that was then apparently the date, the rewritten date on the card as offered in evidence, was an earlier date than the records of the Minneapolis Post Office Department, as testified to in that case showed. That thereafter Mr. Segal representing the plaintiff, whose case depended on the receipt, the claim of having been received on the date shown in the altered date, Mr. Segal then moved for dismissal of the case. Have you heard about that?"

Over objection the witnesses were permitted to answer, each of whom answered that he had not heard of the incident. At the time of permitting this question the court instructed the jury as follows:

> "I instruct the jury that what is happening now is this: The defendant has called character witnesses, and the basis for the evidence given by those character witnesses is the reputation of the defendant in the community, and since the defendant tenders the issue of his reputation the prosecution may ask the witness if he has heard of various incidents in his career. I say to you that regardless of his answer you are not to assume

that the incidents asked about actually took place. All that is happening is that this witness' standard of opinion of the reputation of the defendant is being tested."

Before giving the instruction the court asked counsel for defendant if he wished it to be given, to which counsel replied, "Yes". Out of the hearing of the jury, before propounding the foregoing question, government counsel produced convincing evidence that the incident referred to had a factual basis. While witnesses are called to support a defendant's so-called character they can and do in fact testify only to the good reputation or good name of the defendant. Hence, a witness called as a character witness may properly be cross-examined as to whether or not he ever heard of some incident that might have a bearing on his good reputation. *Michelson* v. *United States*, 335 U.S. 469; *Spalitto* v. *United States*, 8 Cir., 39 F.2d 782; 2 Wigmore on Evidence, Sec. 988; Underhill on Criminal Evidence, 3rd Ed., Sec. 141. In Underhill on Criminal Evidence, supra, referring to the scope of cross-examination of a character witness it is said:

> "But a witness to good character may be asked on cross-examination to test his credibility whether he has heard rumors of particular and specific charges of the commission of acts inconsistent with the character which he was called to prove, generally as to the grounds of his evidence, not so much to establish the truth of such facts or charges, as to test his credibility, and to determine the weight of his evidence. He may be asked if he has not heard some general report which contradicts the good reputation which he had been called upon to prove."

The witnesses here were simply asked whether or not they had heard of the incident referred to in the question. We think the cross-examination was eminently proper.

Defendant challenges the correctness of two instructions given the jury in the instant case. The court at the request of the government gave the following instruction:

> "You are instructed that the fact that Mary K. Johnson has admitted that she had committed perjury in giving false testimony in the *Donald Nelson* cases is no defense to this defendant as she is not to be considered as an accomplice to the crime of subornation of perjury. The fact that she has been a prostitute and narcotic addict or at least narcotic user is no defense to this defendant. However, you are instructed that you should receive the testimony of Mary K. Johnson with care and caution."

Of course, the instructions must be considered as a whole and not by piecemeal. When so considered we think the instruction was a correct statement of the applicable law. Mary K. Johnson was not an accomplice of the defendant as the offenses of perjury and subornation of perjury are separate and distinct offenses, and Mary K. Johnson's perjury was no defense to defendant who was charged with subornation of perjury. *United States* v. *Thompson*, Ore., 31 F. 331. It is to be noted that this instruction warns the jury that the testimony of Mary K. Johnson should be received with care and caution, and it will be observed too that the court in other instructions instructed the jury as to the credibility of witnesses, particularly noting that the testimony of Mary K. Johnson, who was in fact a prostitute and narcotic user, should be received with care and caution, and the court further meticulously instructed the jury that as to the falsity of the perjured testimony it must be corroborated, that the burden rested upon the government to prove the defendant's guilt beyond a reasonable doubt and that the presumption of the defendant's innocence remained with him

throughout the trial until such time, if ever, that he has been proven guilty beyond a reasonable doubt.

Complaint is also made of the following portion of an instruction given by the court:

> "In considering whether or not the requirement of corroboration has been met, you may consider the testimony of other witnesses insofar as it bears upon the truth or falsity of such testimony and such facts and circumstances, if any there be, which tend to throw light on the truth or falsity of such testimony and such admissions by word or act, if any, as you may find to have been made on these matters by the defendant, Segal himself."

This instruction went to the question of corroboration and what facts, if proven, might be considered by the jury for that purpose. We have already considered the question in connection with the charge that the evidence of corroboration was insufficient to satisfy the rule that perjury must be established by the testimony of at least two witnesses or by the testimony of one witness and corroborating circumstances. There was before the jury the many circumstances referred to by us in discussing the question of the sufficiency of the evidence, and in addition to those circumstances specifically pointed out by us evidence was offered by the defendant himself in the nature of extra-judicial statements of Mary K. Johnson made to special agents of the Federal Bureau of Investigation which were consistent with her testimony to the effect that her testimony in the *Nelson* case was false. These statements contained the following recitals:

> "On or about November 1, 1952 at approximately 12:00M at Olson Highway and Aldrich Ave. in Minneapolis, I met Donald Nelson after he had finished his

turn at driving a cab for the Yellow-Cab. Co. I met Don Nelson and we went into Ampy's tavern, Olson Highway and Aldrich Ave. where we ate and it was at this time that I requested him to take me to Chicago, Ill. Don knew that I was a prostitute as I had, upon many occasions, discussed my hustling with him.

"Nelson and I were later joined by Becky Arons, a prostitute, (colored) who lived with Don Nelson and another man whose name I do not choose to mention. We four then discussed the trip and we finally agreed to go and to pay Nelson, twenty-five dollars plus gas. We left Minneapolis around 5:00 a.m. in Nelson's 1952 Buick Special, red in color. We thought the police were following us so we four, Becky Arons, Nelson, myself, and the fourth fellow drove very slowly for a time. In St. Paul we stopped at a gas station on Kellogg St. and had some difficulty with the operator as neither of us wanted to pay for the gas and as a result the operator of the station called the police and the police talked to us.

"We left St. Paul around 6:00 a.m. and we headed toward Chicago with Nelson driving. We travelled slowly as we thought we were being followed by the police and Nelson was real careful and drove around for some time before we drove across the state line. Nelson made sure that we were not being followed before we crossed into Wisconsin.

"On the trip Nelson kept asking us for the rest of the money which we refused to give him until we got to Chicago. We did not intend to pay him so we, meaning my friend and I, kept giving him Marijuana (reefer) cigarettes and Don and Becky discussed the possibility of them staying a few days in Chicago whereby Becky could turn some tricks. Becky had hustled in Chicago before and knew the town.

"We four traveled to a little town about 100 miles from Chicago when Nelson told us to get out as he

knew by this time that we were not going to pay him for the trip. My friend and I got out of Nelson's car and caught a bus to Chicago. The trip cost us approximately $4.00 apiece from this little town in Wisconsin to Chicago. To the best of my knowledge, Nelson and Becky drove back to Minneapolis."

There was evidence of extra-judicial admissions by word and act of defendant, including admissions made to Shelly Warren and to one Dorothy Nelson, and his attempts to impede witness Rebecca Aron, and evidence of defendant's demeanor as a witness in his own behalf, including his evasive and contradictory testimony. This instruction made it clear to the jury what character of testimony might be considered as constituting corroboration. As heretofore indicated in this opinion the quantum of corroboration was for the jury (see *Hashagen* v. *United States*, supra) and, hence, the court very properly gave this instruction.

We have considered all the other contentions urged by the defendant but think they are without merit. Defendant has been twice tried; two juries have found him guilty; he has been represented by very able counsel, and on the whole record we think he has had a fair trial. The judgment appealed from is therefore affirmed.

(JUDGMENT)

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 15726 — September Term, 1956

Tuesday, August 6, 1957

A. RAY SEGAL,
Appellant,

vs.

UNITED STATES OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

This cause came on to be heard on the record from the United States District Court for the District of Minnesota, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment and sentence of the said District Court, in this cause, be, and the same is hereby, affirmed.

And it is further Ordered by this Court that the defendant in the said District Court, A. Ray Segal, do surrender himself to the custody of the United States Marshal for the District of Minnesota, if not now in custody, in execution of the judgment and sentence imposed upon him, within thirty days from and after the date of the filing of the mandate of this Court in the said District Court.

August 6th, 1957

APPENDIX C

(Order denying Petition of Appellant for Rehearing.)

United States Court of Appeals

for the

Eighth Circuit

No. 15726 -- September Term, 1957.

Friday, September 13, 1957.

A. RAY SEGAL,

Appellant,

vs.

UNITED STATES OF AMERICA.

Appeal from the United States District Court for the District of Minnesota.

Petition of the appellant for a rehearing in this cause having been considered, It is now here Ordered by this Court that the same be, and it is hereby, denied.

September 13, 1957.

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 551

A. RAY SEGAL, PETITIONER

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 26-40) is reported at 246 F. 2d 814. The memorandum opinion of the District Court (Pet. App. 21-25) is reported at 147 F. Supp. 506.

JURISDICTION

The judgment of the Court of Appeals was entered on August 6, 1957 (Pet. App. 41). A petition for rehearing was denied on September 13, 1957 (Pet. App. 42). The petition for a writ of certiorari was filed on October 14, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the trial court erred in allowing evidence of an admission of the crime charged when that evidence incidentally indicated the commission of a similar offense and the trial judge specifically cautioned the jury in his final charge that they were to concern themselves only with whether petitioner was guilty of the crime charged in the indictment.

2. Whether the trial court erred in permitting government counsel to cross-examine certain of petitioner's character witnesses as to whether they had heard specific rumors of past misconduct by petitioner.

STATEMENT

Petitioner was found guilty in the United States District Court for the District of Minnesota of subornation of perjury in violation of 18 U.S.C. 1622 (R. 5-12). He was sentenced to imprisonment for eighteen months and a fine of $2,000 (R. 167-168).[1] The Court of Appeals unanimously affirmed (Pet. App. 41).

The indictment charged petitioner, an attorney, with suborning Mary K. Johnson to commit perjury at the Mann Act trial of Donald Nelson, whom petitioner represented. Although the indictment contained only one count and charged but one offense, it contained nine separate paragraphs each dealing with a separate subject matter of perjury at the Nelson trial. The court submitted four to the jury:

---

[1] A prior verdict had been set aside and a new trial granted (R. 3).

(1) that Mary Johnson did not engage in prostitution in Chicago, Illinois, between November 11, 1952, and December 31, 1952, but worked in Spiegel's Department Store there; (2) that she did not use drugs as an addict in Chicago between November 11, 1952, and December 31, 1952; (3) that she did not know whether Nelson had driven her across a state line in his automobile; and (4) that she did not see Robert Bannarn, a co-conspirator in the Nelson case, in Chicago on or about November 11, 1952.

At the trial of the instant case, Mary Johnson testified that her testimony on these matters at the Nelson trial was false and that petitioner had induced her to give such false testimony (R. 21-33; S.R. 1-15). Her testimony as to the falsity of the first item set forth above was corroborated by officers of the Chicago police department and others (R. 44-53, 64-65); as to the second, by the police (S.R. 18-19) and by two former employees of Spiegel's (S. R. 18-20, 53); as to the third, by Robert Bannarn (R. 64) and one Rebecca Aron, who travelled from Minnesota with Nelson, Bannarn and Johnson (R. 67-68, 74-75); and as to the fourth, by Bannarn (R. 64) and a Mrs. Bowde, who owned the apartment building where Bannarn and Johnson lived (R. 43-44). The Court of Appeals for the Eighth Circuit determined there was ample evidence to sustain the conviction (Pet. App. 29) and petitioner does not urge before this Court that the evidence was insufficient.

To corroborate Mary Johnson's positive testimony that petitioner induced her to testify falsely at the Nelson trial, Shelly Warren testified that petitioner

admitted to her that he had induced Mary Johnson to perjure herself in the Nelson case. Miss Warren had been a potential government witness in the Mann Act prosecution of Barrett, whom petitioner represented, and had also been represented by petitioner for a short time (R. 54-57).

She testified at the trial below that she and Barrett lived together and travelled from state to state while she practiced prostitution, and that petitioner knew she was a prostitute (R. 54, 57). In response to a question as to what petitioner told her to say if she had to testify in the Barrett case, she replied, "Well, I was only told not to answer any questions that the F.B.I. asked me" (R. 55). She subsequently corrected this and said that petitioner had given her that instruction when he spoke to her just prior to Barrett's arrest, and that petitioner had spoken to her again after Barrett's arrest when she was subpoenaed to testify as a government witness in the case (R. 56). The following colloquy then took place (R. 56-57):

> Q. And what did Mr. Segal tell you in regard to testifying pursuant to that subpoena.
>
> * * * *
>
> The Witness: He told me that I was never to admit to the Grand Jury that I had ever had intercourse with Godfrey Barrett, I had ever given him any money, I had ever traveled for the purposes of prostitution, that I had only traveled on a share-the-expense plan and that all of us shared expenses. I had received money from my mother in ordinary mail, that I had worked at various places under aliases which I

couldn't remember, because the places I worked I hadn't stayed long enough, only until I was asked for a Social Security card, that if I did that, I would never have to go to trial because I was the main witness for Barrett and that if I did that there wouldn't be any trial. And I asked him if he was going to go with me to Springfield, because I was subpoened [sic] to Springfield and he said it would never reach there, and *he told me he defended a girl named Mary Johnson successfully in a similar case and she had listened to him and the case had been beaten, and said that he told her to say that she worked at Spiegel's Mail Order House for two months, and that she testified in that manner and, whatever the case was, was never—they beat the case anyway.* [Emphasis added.]

In his charge, the judge cautioned the jury that the sole issue for their determination was whether petitioner was guilty of subornation of perjury as charged in the indictment and that they should not speculate on whether he committed another crime (R. 143).

Petitioner produced a number of character witnesses, including some local attorneys. The first lawyer-witness testified on cross-examination that he had never heard petitioner's reputation questioned among the many lawyers with whom he associated. Government counsel then approached the bench and stated to the judge that he intended to ask the witness if he had heard that, in a 1945 case in Minneapolis, petitioner had presented to the court, on behalf of a client, an altered receipt for the delivery of registered mail which had been in petitioner's

possession from the time it was surrendered by the Post Office until presented to the court, and that the judge had requested opposing counsel to report the matter to the Ethics Committee of the local bar (R. 118). Counsel for the government showed the court portions of the transcript from the case in question (R. 119). He also submitted to the court a copy of the letter written to the Ethics Committee by opposing counsel (R. 119).[2]

The court, over objection, decided to permit the question but gave the following cautionary instruction before the question was asked (R. 120):

> The Court: I instruct the jury that what is happening now is this: The defendant has called character witnesses, and the basis for the evidence given by those character witnesses is the reputation of the defendant in the community, and since the defendant tenders the issue of his reputation the prosecution may ask the witness if he has heard of various incidents in his career. I say to you that regardless of his answer you are not to assume that the incidents asked about actually took place. All that is happening

[2] Both the transcript and the letter were made a part of the supplemental record on appeal since both had been shown to the judge. The letter stated that it was written at the instance of the judge, that the date had been altered in favor of petitioner's client, that "it was obvious" the return receipt had not been in anyone's hands other than Mr. Segal's from the time it was delivered to him by the post office until it was produced by him in court, that Mr. Segal apparently "has perjured himself as well as committing perjury", and that both he, counsel, and the judge would be willing to appear before the Committee in presenting evidence about the above matters (S. R. 53-55).

is that this witness' standard of opinion of the reputation of the defendant is being tested.

The question followed (R. 120-121):

> Q. Mr. Iverson, have you heard anything about the proceedings in the case of Max Herman against Joseph St. Dennis, which was in Municipal Court, City of Minneapolis, in October 1945, and have you heard whether in that trial the defendant, Mr. A. Ray Segal, presented to the Court and offered in evidence a card registered mail postal receipt in which it appeared that the date on the receipt had been rewritten from the time it had first been written, as to date, and that thereafter the postal authorities here in the City of Minneapolis testified that the date was then apparently the date, the rewritten date on the card as offered in evidence, was an earlier date than the records of the Minneapolis Post Office Department, as testified to in that case showed. That thereafter Mr. Segal representing the plaintiff, whose case depended on the receipt, the claim of having been received on the date shown in the altered date, Mr. Segal then moved for dismissal of the case. Have you heard about that?

Certain other of the lawer-witnesses were asked the same question.

In its general charge, the court amplified the instruction above, pointing out, *inter alia* (R. 149):

> * * * There is no proof in this case and none could be produced legally before you within the rules of evidence as to the actual happening of those incidents about which the prosecution was permitted to inquire. Accordingly, you are not to hold any of those incidents so inquired about

against this defendant nor are you to assume or consider that they may have occurred. * * *

ARGUMENT

1. Petitioner contends that the trial court erred in admitting the testimony of Shelly Warren (*supra*, pp. 5) which indicated the commission of a separate similar offense (Pet. 17-19). Petitioner recognizes that what he told Miss Warren about Mary Johnson's testimony was admissible (R. 129; Pet. 18), but he objects to the admission of the evidence disclosing an attempt to suborn Shelly Warren to perjure herself in the Mann Act trial of Godfrey Barrett (R. 129; Pet. 18-19).

Miss Warren's testimony, however, was not divisible. To make petitioner's comments about Mary Johnson intelligible as an admission, it was necessary to show the context and the attendant circumstances. If Shelly Warren had merely testified that "Mr. Segal told me a girl named Mary Johnson had listened to him in a similar [or another] case when he told her to say she worked at Spiegel's for two months and the case was beaten," the evidence would have lacked both reliability and foundation. It was incumbent upon the prosecution to show that the witness had occasion to speak to petitioner under circumstances that would prompt him to make such a statement.[3] The full significance of the statement

[3] Similarly, the testimony of Lovie Barrett and the United States Marshal to which petitioner objects (Pet. 17-18) was competent. Lovie Barrett merely established that petitioner had been retained in the Barrett case (R. 61-62), and the

as to Mary Johnson would not have been apparent if torn from the context of petitioner's attempt to persuade Shelly Warren to testify falsely in the Barrett case. Facts which tend to explain or unfold a situation are admissible as establishing the relevancy of evidence. *Bedell* v. *United States*, 78 F. 2d 358, 364 (C.A. 8). And relevant evidence is not rendered inadmissible because it incidentally tends to prove the commission of another crime. *Moore* v. *United States*, 150 U.S. 57; *Smith* v. *United States*, 236 F. 2d 260, 267 (C.A. 8), certiorari denied, 352 U.S. 909; *Bram* v. *United States*, 226 F. 2d 858, 863 (C.A. 8); *Vause* v. *United States*, 53 F. 2d 346, 355 (C.A. 2).

Moreover, the evidence was independently admissible on the issue of intent. The conversation between petitioner and Shelly Warren, which took place between the time of the crime charged in the instant indictment and petitioner's trial, was closely connected in time with the offense here and involved precisely the same type of conduct. See *Nye & Nissen* v. *United States*, 336 U.S. 613, 618; *United States* v. *Herskovitz*, 209 F. 2d 881, 885 (C.A. 2).

Marshal testified as to the date Barrett was apprehended (R. 62). Their testimony corroborated that of Shelly Warren and was not itself prejudicial.

Petitioner puts misplaced reliance on *Boyd* v. *United States*, 142 U.S. 450, and cases following the principle set forth therein. In *Boyd*, evidence was introduced at a murder trial connecting defendants with five robberies committed before the murder. The robberies were crimes completely unrelated to the murder for which the defendants were being tried. In this case, testimony relating to an admission inci-

2. Petitioner asserts that it was prejudicial error to permit the character-witness lawyers to be asked if they had heard of the altered postal receipt (Pet. 11-17; R. 120-121; *supra*, p. 7).

Before asking the question, government counsel satisfied the court that figures on the receipt had been forged and that petitioner had been suspected of forging them. He submitted to the court a transcript from the *St. Dennis* trial and a copy of a letter from opposing counsel in that case to the Chairman of the Ethics Committee of the County Bar Association, stating that it was written at the instigation of the trial judge and requesting an investigation into the matter (R. 119; S.R. 46-55; *supra*, p. 6). Before permitting this cross-examination, the court carefully instructed the jury that the witness' standard of opinion of the reputation of petitioner was being tested and that they were "not to assume that the incidents asked about actually took place" (*supra*, p. 6). These instructions were amplified in the general charge (R. 149; *supra*, pp. 7-8). The matter was properly handled under *Michelson* v. *United States*, 335 U.S. 469. See, also, *Spalitto* v. *United States*, 39 F. 2d 782, 787 (C.A. 8); *Kasper* v. *United States*, 225 F. 2d 275 (C.A. 9); *Smith* v. *United States*, 173 F. 2d 181, 185 (C.A. 9); *Mannix* v. *United States*, 140 F. 2d 250, 252 (C.A. 4).

The *Michelson* case involved a charge of bribing a federal officer. The defendant admitted the payment

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described indicated the commission of a *similar* offense, and it bore directly on the issue of intent.

but claimed that it was induced by the officer. He also offered testimony as to his good reputation. On cross-examination, the prosecutor was permitted to ask the character witnesses whether they had heard that the defendant had been arrested 27 years previously for receiving stolen goods. This Court held that there was no prejudicial error and set up the following standards for such cross-examination: (1) the trial court must satisfy itself as to the existence of an occurrence which, if reported and rumored, would bear upon reputation; (2) the question must be as to report, that is, in the form of "have you heard" rather than "do you know"; and (3) appropriate instruction of the jury as to use of the evidence is desirable if not necessary. All of those requirements were met in the present case.

Petitioner contends that there must be no doubt as to the *fact* of the misconduct and implies that the question, to be proper, must ask whether the witness has heard rumors of an uncontroverted fact of misconduct (Pet. 11-17). However, as pointed out several times by the trial court, it is the witness' standard of opinion that is being tested, *i.e.*, whether he had heard *rumors* about a specific act of misconduct that would affect petitioner's reputation, regardless of the truth of the rumors.[*] This Court said in

[*] The court also pointed out that there was no proof in the case, and that none could be produced legally, as to the actual happening of the incident (*supra*, p. 7). The letter and transcript were submitted to the court to enable the judge to determine whether the question could properly be asked.

Michelson, 335 U.S. 469, 479:

> * * * The prosecution may pursue the inquiry with contradictory witnesses to show that damaging rumors, *whether or not well grounded*, were afloat—for *it is not the man that he is, but the name that he has which is put in issue.* * * * It may test the sufficiency of his knowledge by asking what stories were circulating concerning events, such as one's arrest, about which people normally comment and speculate. [Emphasis added.]

In this case, specific facts were presented to the court showing that petitioner, an attorney, had been suspected of forging numbers on a postal receipt. Reports of that kind are very apt to circulate among members of a local bar. Certainly, then, it was proper for the government to test as it did the standard of opinion of those lawyers who were called by petitioner as character witnesses.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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